THE

REVENUE REGISTER.

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REMOVAL OF RESTRICTIONS ON THE ALIENATION OF ESTATES.

The policy of the good old days is passing away, and free trade and the full enjoyment of the liberty of the subject are principles of Government that are taking the place of that "mild despotism" which so well suited, and for a long time to come is the only one fitted to, the character, habits, and traditional instincts of the people of this country. No other power in the world but liberal England, whose notions are simply chivalric in her relations with her subjects, would accord to the nations of this vast empire those regulations and those laws of administration which are essentially requisite for, and admirably adapted to, highly civilized European kingdoms, but are greatly in advance of the various "peoples, nations, and tongues" of wide Hindostan. There is no Collector's *nirak* now to regulate the bazaar prices of food to protect the famine-stricken masses from the unbounded rapacity of the grain-dealer. If the rains of Heaven hold off a few days, or if the showery blessings descend a little too freely, it is all the same to the native rice merchant. In the one case there is no crop at all; in the other, it has been destroyed; and up goes the tariff accordingly. What matters it to the poor starved wretch who wants food to eat, that he has the glorious privilege of equal laws, free trade, and the full exercise of his own sweet will—take it or leave it: he wants rice at a price which he can afford; and he wants his father, the Collector, to tell the bazaarman that he must have it at that price. And it was not the poor man alone that was enfolded within the protecting arms of the paternal Cirkar; but it was the rich man as well—the cock-fighting, dancing girl loving, prodigal inheritor of a landed estate and an ancient name, who was told by the official father of both rich and poor, my son, you cannot part with a single foot of your broad acres without my express permission and sanction. Regulation XXV of 1802 was the palladium of the landlord, and the spirit of the times, tyranny and despotism, founded in benevolence, protection and fatherly jealousy and care, breathe in every line of the old enactment. The preamble, quaint and stiff in expression though it be, is perfectly characteristic of the days when the people of this country were as happy as children under patriarchal rule. "Whereas," proclaims the old enactment, "it is known to the Zemindars, Mirasdars, Ryots, and cultivators of land in the territories subject to the Government of Fort St. George, that from the earliest until the present period of time, the public assessment of the land

revenue has never been fixed; but that, according to the practice of Asiatic Governments, the assessment of the land revenue has fluctuated without any fixed principles for the determination of the amount, and without any security to the Zemindars or other persons for the continuance of a moderate land tax; that on the contrary, frequent inquiries have been instituted by the Ruling Power, whether Hindoo or Mahomedan, for the purpose of augmenting the assessment of the land revenue; that it has been customary to regulate such augmentations by the inquiries and opinions of the local officers appointed by the Ruling Power for the time being; and that in the attainment of an increased revenue on such foundations, it has been usual for the Government to deprive the Zemindars, and to appoint persons on its own behalf to the management of the zemindaries, thereby reserving to the Ruling Power the implied right and the actual exercise of the proprietary possession of all lands whatever; and whereas it is obvious to the said zemindars, mirasdars, ryots, and cultivators of land that such a mode of administration must be injurious to the permanent prosperity of the country by obstructing the progress of agriculture, population, and wealth, and destructive of the comfort of individual persons by diminishing the security of personal freedom and of private property; Wherefore, the British Government, impressed with a deep sense of the injuries arising to the State and to its subjects from the operation of such principles, has resolved to remove from its administration so fruitful a source of uncertainty and disquietude, to grant to Zemindars and other landholders, their heirs and successors, a permanent property in their land in all time to come, and to fix for ever a moderate assessment of public revenue on such lands, the amount of which shall never be liable to be increased under any circumstances." And then the Regulation proceeds to enact various provisions for the fixing of the assessment, the punctual payment of such assessment, and for the exchange of cultivating agreements between landlord and tenant. It is not the fashion in modern legislation to have any preamble whatever, but simply in few words and no more to enact the exact provision that is required—a decided advantage in more ways than one, but partaking rather of the caution and self-interest of the present days of non-interference.

It is not our intention now to review all the provisions of this *magna charta* of the proprietary system: we propose to confine our attention to a most salutary provision of the law enacted by Section 8, the effect of which, notwithstanding that the principle involved in it may be foreign to our notions of the liberty of the subject, has been to save many a noble estate from being broken up into petty holdings, or from passing away from the old families of the country into the hands of rapacious money-lenders or unscrupulous and crafty parasites. The section to which we refer does indeed confer such power of actual gift, transfer or other alienation on the proprietor of an estate as unmistakeably to mark complete ownership: it also directs that any such transfer of right shall be valid, and shall be respected by Courts; but it adds a catalogue of jealous provisos which hedge the concession around with a strong breastwork of protection. In the first place, the transfer or alienation must not be repugnant to Hindoo or Mahomedan law, as the case may be: it is to have no legal force or effect unless the sale, gift, transfer or alienation has been regularly registered in the Collector's Office, so that the public assessment may be fixed on the separated portions: and unless these requirements are complied with, the Zemindar is not to be exempt from payment of any part of the public land tax assessed on

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the entire zemindary previously to such transfer. This actually amounted to a recognition by the Collector of the District of the alienation. Such recognition implied his sanction; and if, in the exercise of his fatherly interest in the owner of the estate, he did not like the alienation, he might refuse to register the alienation, or allot the assessment on the separated portions, in which case the alienation would have no legal force or effect, and the proprietor remained liable for the full assessment on the entire estate. This is the *primâ facie* and even fair logical construction of the section; but this construction has been rudely shaken by a recent well-known decision of the High Court in the *cause célèbre*, of the *Court of Wards* v. *The Executor of Ponnusawmy Taver*, the effect of which was to transfer two of the finest sub-divisions of the great zemindary of Ramnad to the children of Ponnusawmy Taver, who had managed to wheedle the late cock-fighting Zemindar out of a deed of gift conveying those fair lands to him. We cannot, however, stop to discuss this part of the question; our object being rather to note the march of legislation in connection with a proprietor's rights of transfer. As a corollary to Section 8 of Regulation XXV of 1802, Section 9 of Regulation XXVI of 1802 was enacted; and it provided that where estates might be divided into portions, charged with a less proportion of the permanent land tax than the sum of 500 pagodas (Rupees 1,750) per annum, such separation of lands should not be held valid in the Civil Courts, but the proprietor of the estate before the division was to continue liable for the entire amount of the permanent land tax in the same manner as if the separation had not been made. Even this watchful proviso in the interests of the proprietor came to be considered impolitic and inexpedient in the course of time; and the resolution was taken to modify it. Accordingly Regulation I of 1819 was passed, which permitted zemindaries to be subdivided into portions not less than one village or dependent hamlet in extent, though the amount of the sub-assessment might be less than 500 pagodas. But the Revenue Board in recent years considered the law thus modified to be still behind the times. In fact they considered it unjust both to Zemindars and to the persons to whom they might alienate portions of their estates, and were in favor of a complete removal of all restrictions on the right of transfer, especially as such removal could be effected without detriment to the punctual realization of the revenue—which, apparently in these days of non-interference with the liberty of the subject, is all that the Government have to regard. As to the unjust bearing of the law towards Zemindars, it was pointed out that, under the old law of limitation, a grant by a Zemindar of *lakhiraj* land—*i. e.*, rent free, or favorable tenure—was good only during the life-time of the grantor; every succeeding Zemindar having it in his power to impeach it, provided he did so within twelve years of his succession; whereas, under the present law, once the Statute begins to run at the death of the grantor, it does not cease to run; so that a Zemindar, say the second in succession from the grantor, would have his claim barred by the *laches* of his predecessor, and would yet be liable to go on paying the public demand on the alienated lands unless they consist of entire villages, in which case, of course, he could require the Collector to register and sub-assess them as separate estates under the Regulations of 1802 and 1819. Suppose A and B were minor Zemindars under wardship. A's grandfather had given five villages in *Inam* to a favorite dancing girl; his son and successor held the zemindary twelve years and died without suing to redeem:

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A, the latter's son, would be barred by his father's *laches* from suing to recover the alienated villages; but the Court of Wards could secure him considerable relief by saddling the dancing girl or her heirs with the land tax assessable on the property. But take B's case. His grandfather, instead of bestowing five separate and entire villages on his dancing girl, had endowed his favorite with portions of land out of twenty different villages: in the aggregate, these assignments were quite as valuable as, perhaps more valuable than, the five villages alienated by A; but being in each case less than an entire village or dependent hamlet, B could have no relief either at law, or by the intervention of the Collector. He must be not only content to lose the lands, but go on paying the Government *peishcush* as originally fixed on the entire zemindary. There is no doubt that, in this respect, the law could work harshly and unequally. Then as to its operation on the alienees. One would think that they at least had the best of the bargain; they would have their lands and somebody else would pay the assessment for them. This might be in the case of the alienee of an entire village; but what of the alienee of portions less than a village? Why, at any moment a revenue sale by the Collector might destroy a title which had otherwise become perfect. If the entire zemindary was put up for sale for arrears of revenue, the alienated portion must go with it, because it had not been officially separated and sub-assessed; and the only way the alienee could save his lands was to pay the whole of the arrears on the entire estate. A Zemindar might often, from motives of pride, indifference, or spite, in order to depreciate the value of the property once that of his ancestor, neglect to separate the alienated portions from his estate; so that if a revenue sale of the estate took place, the alienees of even larger portions than a village for valuable consideration, might be ruined by the neglect of the Zemindar. What the Revenue Board aimed at therefore was to bring in a law under which, when either party could shew that the alienation, whether large or small, was absolutely unassailable, the Zemindar might be able to secure a proportionate reduction of his *peishcush*, and the alienee protection against a revenue sale for arrears due on the entire zemindary or estate. Accordingly a Bill was brought by the Honorable Mr. Carmichael into the Legislative Council, which has since been passed into an Act entitled Madras Act I of 1876, the object of which is to make better provision for the separate assessment of alienated portions of permanently settled estates. In introducing the Bill the Honorable Mr. Carmichael fully explained the necessity for such a change of law. He pointed out that the chief objection put forward to the free subdivision of estates was the alleged difficulty of collecting small items of revenue, but that experience had proved that there was no difficulty whatever. About two and half millions of our ryots pay under 10 Rupees each a year for the lands cultivated by them; many considerably under that sum; and, under the Madras system of revenue, no difficulty was felt by the Tahsildars in collecting these small items.

In moving for the final consideration of the Bill preparatory to passing it into law, the Hon'ble Mr. Carmichael further explained the necessity of introducing such a measure, the personnel of the Council having considerably changed, and His Grace the Duke of Buckingham and Chandos having assumed the position of President since the first introduction of the Bill. We quote the Hon'ble mover's explanation. "By the Hindoo law as it prevails in this Presidency, a man's sons become from their birth co-parceners with him; and he cannot,

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without their consent, or unless under circumstances of necessity, alienate more than his own interest in the estate: the alienation of anything beyond his own interest would be invalid for the excess. And if the estate is impartible, as some zemindaries are, it is the right of the son to receive the estate *intact* at his father's death. Such a Zemindar, as remarked by Mr. Justice Holloway, has really an estate analogous to an estate tail as it originally stood upon the Statute *De Donis*. He is the owner, but can neither encumber nor alienate it beyond the period of his own life. Suppose then that a Zemindar, of whatever class, under circumstances of necessity or in some other indefeasible way, sells, not a whole village, but a portion of one. Why then, until you pass into law the present Bill, the son, on succeeding, would be compelled to go on paying the land tax due on the alienated portion, although he could never recover the lands, because the Collector won't recognize it as a separate zemindary estate, which must consist of an entire village at least. Again, for the same reason, the alienee might at any moment be sold up at a revenue sale for arrears due on the zemindary to which the lands still belong in the Collector's books." The Bill was thereupon passed, and having received the assent of the Viceroy, has now become law. The Act (I of 1876) consists of 9 Sections. The first provides for the alienor or alienee of any portion of a permanently settled estate, or his representative, applying to the Collector for registration and separate assessment. Section 2 directs the Collector to hold an inquiry as to who is the owner, for which purpose he is to insert notices in the Gazette that the separate assessment applied for will be made, unless cause to the contrary is shown within 60 days; and then, when he finds that all parties consent to the alienation, he is to proceed to register the alienated portion in the name of the alienee, and to apportion the assessment of the alienated portion in the manner provided in Section 45 of Madras Act II of 1864, subject to the sanction laid down in Section 46 of that Act. Section 3 enacts that upon the assessment being declared, an amount equal to the sum assessed in the separated portion shall be deducted from the land revenue payable by the estate. Section 4 declares that, after this, the portion so separately assessed shall no longer be liable in respect of arrears of revenue due by the estate of which it once formed a part; and that the estate shall not be so liable for the portion separately assessed. Section 5 permits any person aggrieved by the fact of the separate registration to sue in a Civil Court for a decree prohibitory of such separate registration. Section 6 likewise permits any person aggrieved by the Collector's refusal to register, to sue in a Civil Court for a decree to compel him to register. Section 7 permits any person aggrieved by the separate apportionment of the assessment, to appeal to the Board of Revenue within 90 days. Section 8 is a sort of saving clause, which gives the Governor in Council power to interfere after any lapse of time, and to cause a re-adjustment, if it should appear that there has been fraud or material error in the apportionment of such separate assessment. The last Section (9) simply repeals Regulation I of 1819. As far as its purpose is concerned, the Act is open to no objection whatever; it is complete and free from defect in all its provisions; but we must confess that we are conservative enough in our notions to hold that the law is in advance of the times. The people of this country, with the exception of the very enlightened few, are children who, for their own good, still require a watchful restraint being placed on the freedom of their actions.

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CORRESPONDENCE.

LONDON LIFE.

[FROM OUR SPECIAL CORRESPONDENT.]

SIR,

PEACE or War? is the question on every lady's lips. There has not been so much curiosity and excitement evinced by all classes since the memorable close of 1853, when the Crimean War was pending. Now your friend in the city has but one topic of conversation, your club acquaintance but one subject of discourse, will there be war? The "whip" at the covert side, the keeper among the stubbles, the jockey on Newmarket Heath, the waiter at your inn, and your civil tradesmen all ask the same question; if you please, Sir, are we going to fight? It is not very easy to reply, and probably no Statesman in Europe, with the exception of Prince Gortschakoff, has any very clear ideas on the subject. We must confess that we are passing through a period of confusion and uncertainty which leaves no solid basis for anticipating the future. And yet there are numbers of people so blinded by party prejudice as to believe, or at any rate pretend to believe, that matters have not been made infinitely worse, and hostilities far more probable, by the sensational agitation of Mr. Gladstone, Mr. Lowe, Mr. Fawcett and their friends. Had it not been for the encouragement given by them to the Servians and the Russians, peace would have been speedily assured. As it is, no one knows what may happen. Turkey offered an armistice of ten days, but Servia demanded six weeks; now Turkey has offered to suspend operations for six months, but that does not appear to suit Russia. It is evident that an armistice of only six weeks would be greatly to the disadvantage of Turkey. It would just give time to Russia and Servia to complete their preparations and cause a prolongation of hostilities through the winter, when all the atmospheric conditions would be against the Turks, who cannot stand variations of climate and temperature like their Northern foes. Six months would appear to be a reasonable period, more especially as during that interval diplomacy might arrange a solution of the existing tangled situation. But I can only repeat that at present no one sees his way. Every day brings fresh proof that the so-called Bulgarian atrocities were grossly exaggerated; and it is now plain that even Mr. Baring—who went out as the representative of Her Britannic Majesty's Government to enquire into the alleged enormities—was the dupe of interested and mendacious Russians and Bulgarians, who actually in many districts dug up hundreds of dead bodies out of their cemeteries and strewed them on the road to be exhibited as victims of Turkish barbarity. Even the Revd. Canon Liddon, a highly educated and talented dignitary of the Anglican Church, posted off to the insurrectionary provinces and allowed himself so far to be carried away by his feelings as to assert that he had seen Christians impaled on stakes, and when the matter was investigated and to all intents and purposes refuted by M. Musurus, the Porte's ambassador in London, the revd. gentleman had to confess that in going down a river in a steamboat he had seen an object like a Christian on a stake, but it possibly might have been a scarecrow!!

Mr. Butler Johnstone, the member for Canterbury, has addressed an admirable letter of rebuke to Mr. Gladstone for his unpatriotic and eccentric behaviour. I should like to give you some lengthy extracts but space will not permit, still, I cannot help quoting the concluding sentence of the pamphlet. "If any "one thinks that this Bulgarian agitation will "promote a party purpose, I sincerely believe "that he will find that he held the common "sense and 'narrow' patriotism of this country "a great deal too cheap, and when the inevi-"table reaction shall set in, and the storm of "passion shall abate, and calmer counsels "prevail, those who wished to convert a righte-"ous indignation into a party victory, and "ride triumphantly on the storm, may find "themselves more effectually than ever stranded "on the shoals of discredited faction." Already have Mr. Butler Johnstone's predictions been fulfilled. Even the *Times* has turned round and no longer abuses the Turk or pats the Russian on the back. The fatal effects of Mr. Gladstone's political juggling are now patent to all, and the country has returned to a state of sanity. We are however by no means rid of the "Eastern question." All the wise men in all the States of Europe have been putting their heads together, but to very little purpose. In settling the "question of the East," the interests of England, Russia, Turkey, Austria, France, Italy and Germany have to be considered, not to speak of the Sclavonic Provinces, and these eight or nine conflicting interests appear to be almost irreconcileable. These wars and rumours of wars have naturally had a most depressing effect in the regions of the Stock Exchange. Although the Bank rate of interest is only two per cent, and money, as the saying goes, is a "drug in the market," yet there is no business doing. The most adventurous speculator is loth to risk his money when living on a volcano, for that is indeed the position. Consols and foreign stocks are low as it is, but, should an European War break out, Heaven knows where prices would go to. Thus it is that millions upon millions are lying unprofitably idle, and the commerce and prosperity of the whole world are retarded because ambitious potentates seek to remove their

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neighbours' landmarks; because secret agitators stir up rebellion in hopes of getting plunder out of the general wreck; because reckless and effete governments will not take steps to ensure the proper administration of law and justice within their gates. If the loss of wealth caused by these frequently recurring periods of panic and suspense could be accurately computed and set down in writing, it would amaze and appal the world, and perhaps even the Bismarcks, the Gortschakoffs, the Tchernaieffs, and the Mahmouds might give more heed to their ways. It seems now pretty certain that Turkey will pay no interest on her 200 millions of debt until the question of Peace or War is *finally* settled, and Egypt is in much the same plight. Mr. Goschen has gone to Cairo to see what he can urge on behalf of the poor bondholders, but those who ought to know are not sanguine as to the result of his mission.

The late Sultan Murad is in extremis, and from all accounts death will be a happy release for him. He was examined by four physicians the other day, and could neither move from the sofa on which he was reclining, nor articulate a single intelligible word in answer to the questions put to him. His memory has quite gone; and being unable to take nourishment, he is in a fearful state of emaciation. It would almost appear as if some unseen and deadly influence was at work to blast and ruin the occupants of the Turkish throne. The Sultan Abdul Asis was a very decent young man till he became Sovereign of the Empire; and this miserable Murad was, as far as we know, tolerably well in mind and body before he succeeded to Power. Now little more than four months have elapsed, and his condition is that which I have described above. Is it the life of luxury, solitude, idleness and self-indulgence which does the mischief, or is foul play to be suspected? We shall see how the present man gets on. If newspaper reports are to be credited, he is so far really active and energetic, and does not devote himself solely to the pleasures of the Seraglio and the Banqueting Hall. He has undertaken, in the event of war with Russia, to place himself at the head of the army, and he has solemnly promised universal and sweeping reforms. But then, alas! we have learned by sad experience that Turkish promises, like pie-crust, are made to be broken. If the present ruler of the Ottoman Empire furnishes a glorious exception to the rule, he may defy Russian ambition for any number of years to come.

It was almost this very day last year that Albert Edward, Prince of Wales, quitted these shores for India. How rapidly the days and weeks glide by, and what a vast amount of information he must have acquired in those fleeting six months which he spent among the princes and peasants of Her Majesty's Indian Empire! There is no doubt that he was very deeply impressed and highly gratified by all he saw there, and it is to be hoped that he in his turn satisfied the people over whom he is some day to rule. If we may judge by the gorgeous presents with which he returned laden, he must have been sufficiently popular. These treasures have been freely exhibited to the British Public; and having been displayed for three months to the fashionable world of the West End at the South Kensington Museum, they have now been transferred to Bethnal Green in the far East of London, for the delectation, and possibly instruction, of publicans and costermongers. It is this kind of thoughtful consideration for the lower classes which is one of the chief causes of the Prince's universal popularity in the United Kingdom, although "Pat" does grumble (and with some show of justice) that the Heir Apparent managed to devote a good deal more time to the "niggers" than to the denizens of the Emerald Isle, which is so much more handy. However, they have now got a real live prince of the Blood Royal (the Duke of Connaught), who has taken command of a battalion of the Rifle Brigade, and proposes to spend the next twelve months in Dublin and its vicinity, so that the "Castle" will be en fête all the year.

We are promised a new "sensational" case which is to eclipse all the sayings and doings of Mr. and Mrs. Bravo, Mrs. Cox, and Dr. Gully. Of course it is impossible at present even to hint at the names of the parties concerned, but the following is a resumé of the facts as they have reached me. Some two years ago a gentleman married a young lady, an only daughter, and lived amicably with her and his mother-in-law, a worthy old lady, the possessor of the solid sum of £40,000. To pass away the long winter evenings, the bridegroom introduced the pastime of shooting with saloon pistols. One unlucky evening the mother-in-law was accidentally shot, and her daughter inherited the money. Then the daughter died suddenly, and the gentleman found himself a widower minus a mother-in-law but plus £40,000. With that sum in hand, he was not inconsolable; and in course of time led to the altar a lady endowed with as ample a fortune as himself. But ill-luck still attended him, for, being on a tour in Switzerland with his second bride, he took her for a walk in some of the most picturesque and mountainous districts. Fancy the dismay of the landlord and his other guests when the husband returned to the hotel *alone*, distracted with grief, and informed the company that his wife had fallen over a precipice and was no more. She, poor soul! had likewise bequeathed her money to her husband. That is the story. I make no

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comments, but I know on pretty good authority, that the various facts will shortly engage the attention of the gentlemen of the long robe. What a wicked world it is!

The great wonder of the age, the monster weapon, the 81-ton gun has been successfully tried during the last fortnight at Shoeburyness. It is indeed a gigantic cannon, a real work of the Titans, a gun that drives a projectile weighing many tons for a distance of over five miles! Why, the very powder that forms the bursting charge is not powder but solid lumps of charcoal and saltpetre like good-sized coals. The force of the explosion is terrific. When the gun was first fired every window for miles round was smashed, lath and plaster ceilings and walls were reduced to fragments, doors were blown off their hinges, and strong men carried off their feet. Six hundred pounds worth of damage was done to the soldiers' huts alone, and the spectators nearly had all the breath blown out of their bodies. A gun of this sort will be rather a delicate weapon to handle, or the proud possessor of it may one day find himself "hoisted with his own petard." I wonder what will happen when it is fired for the first time on board a ship; for I believe its final destination is to be the deck of an iron-clad. May I *not* be there to see! By the bye, whilst we were doing so much damage at Shoeburyness with our new "infant," the engineers of New York managed to blow up a rock called Hell Gate without cracking a pane of glass or smashing a single article of furniture; and yet they made use of no less than fifty thousand pounds of dynamite, a more powerful explosive than gunpowder. All that can be said is "they manage these things better on the other side of the '*Herring Pond*.'"

The "spiritualistic" world has been sorely exercised of late, and "mediums" have been shaking in their shoes. Mrs. Guppy quivers with indignation, and Serjeant Cox groans over the iniquity of unbelievers. Owing to a paper "on spirits" and "media" having been read and discussed at some public scientific gathering, and owing to dearth of news in the "silly" season, a controversy was for many days carried on in the columns of the *Times* newspaper as to the genuineness of certain spiritual manifestations. A certain Dr. Slade was the professor who held communications with the spirit of his deceased wife, and who affirmed that she wrote messages to him on a slate. Messrs. Maskelyne and Cooke, the well-known conjurors, said it was all a trick and they could do as much and a great deal more. Dr. Lankester said "spiritual manifestations" were all bosh; Mr. Cox retorted that he should not dogmatise on a subject of which he was totally ignorant, and so on. At last two or three learned physicians attended a "seance," and watched all Dr. Slade's movements and manipulations with great circumspection; of course they went with the predetermined belief that the thing was an imposture and a sham. In the middle of the "seance" up jumped one who seized Slade and vowed he had detected the trick; mutual recriminations ensued and the meeting broke up in confusion. But the matter did not end here; so convinced was Dr. Lankester that the pretended intercourse with the spirit world was a trick and a most pernicious one for the morals of weak-minded people, that he invoked the strong arm of the law to suppress the exhibition; and Dr. Slade's "seances" were last week transferred from his private residence in Bedford Place to the Police Court in Bow Street, and Mr. Flowers, the Magistrate, and Mr. George Lewis, the eminent lawyer, assisted. In fact, Dr. Slade was summoned as a rogue and a vagabond, who was conspiring to extort money on false pretences from credulous idiots. He was placed in the same category with the "three card trick" performer, and the "pea and thimble" man. This seems a little harsh; but, if it can be proved that there is no such thing as "psychic force," perhaps the world will get on quite as well without the assistance of those clever gentlemen on whom the great Mr. Home's mantle has fallen. The enquiry in the Police Court is likely to last for some time; for counsel on both sides are evidently bent upon any amount of cross-examination, and the public who throng the Court are never tired of listening to the pros and cons. The most amusing scene was the examination of Mr. Maskelyne (who sets up to be the champion exposer of spiritualistic dodges), and the production of the mysterious table, which by the bye was only valued by his owner at five and twenty shillings. The question is, is it advisable to set the huge machinery of the law in motion for such a trivial cause? Is not Dr. Lankester a little too "paternal" in his assiduous protection of his fellow citizens, from what he looks upon as their own imbecility? If Dr. Slade is acquitted, which in all probability will happen, this prosecution will have been a fine advertisement for him; his dupes will increase a hundred fold, and the "spirit world" will sing Hallelujah!

The racing coteries are all alive, and will remain so for another three weeks, until the curtain falls on the turf season of 1876. October is a busy month at Newmarket, for, besides the two great handicaps at head quarters, there are sundry most interesting events set for decision, such as the Middle Park and Dewhurst plates, and the Clearwell, Prendergast, and Criterion stakes, which settle the superiority of the respective two year olds and furnish a key to the Derby and Leger of 1877. The October handicap was won by Prince Soltykoff's horse Timour, and poor Admiral

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Rous was considerably objurgated for treating him with such a lenient impost. However, the general public managed to detect the "blot" in the handicap and won a lot of money, so they have no reason to be dissatisfied. The Cæsarewitch produced a field of nearly thirty runners, and was well contested throughout, although the favorite "Rosebery" won easily at the finish by four lengths, the second favorite Woodland coming next. The winner's name reminds me that the Earl of Rosebery has sold off his racing stud and gone to America to study the manners and customs of the Yankees, and not simply in order to kill something which is the aim and object of nearly all young gentlemen's travels in these days. Lord Rosebery is considered an embryo Whig statesman of great promise, and is sure to make his mark in diplomacy or politics. He gave ample proof of his good qualities as a man of business when we presided over the Select Committee on "horseflesh," which sat two or three years ago. In the great two year old race, the Middle Park plate, a French horse "Chamant" by Mortimer out of Araucaria was victorious. Twenty to one was laid against him and the favourites were nowhere. He belongs to Count Lagrange (owner of Gladiateur and Fille de l'air) who, after a short secession, has again returned to the English turf, and his success was received cordially. Unfortunately "Chamant" is not in the Derby, but he is engaged in the Grand prize of Paris and the St. Leger. The horse is named after the Count's stud farm in Picardy near Chantilly. The next great race will be the Cambridgeshire, and after that "legitimate" sport will be at an end, but hurdle racing and steeple-chasing will afford ample amusement and occupation for those who fancy they can never have too much of a good thing. As usual great havoc has been dealt among the partridges and pheasants; in Norfolk the Maharajah Dhuleep Singh killed eight hundred birds in one day with his own gun. To do this, he fired off nearly a thousand cartridges. Query—was his tympanum affected, and was his shoulder sore? The very dry weather has been unpropitious for cub-hunting, but now that it has commenced raining in good earnest we shall shortly hear of lots of sport. The Duke of Edinburgh being abroad with the Mediterranean fleet, the Prince of Wales will shoot his covers in Kent, so what with Sandringham and his numerous friends in various parts of the country, he will have enough to do to accomplish all the slaughter which will fall in his way.

London will be disappointed of its new Opera House. It is quite impossible to open it next season. Mr. Mapleson began very pluckily and had much substantial assistance from friends as well as manifold promises of support; but either those promises were delusive or the popular manager's estimates were incorrect, for the money appears to be all gone, and the works are completely stopped. No doubt cash will ultimately be provided somehow or other, as so much capital has already been sunk in the purchase of the valuable site, the laying of the elaborate foundations, and the commencement of the structure which has already risen to the height of about thirty feet. Meanwhile we shall remain at the tender mercies of Mr. Gye, the talented impresario of the Royal Italian Opera Covent Garden. Mr. Mapleson's temporary fiasco will be a fine thing for him, and he will make hay while the sun shines. We are such a music-loving people, that there is quite scope enough for two Opera Houses in the metropolis, and a little "opposition" is a very wholesome thing; but as long as "Her Majesty's" troupe remain located in Drury Lane Theatre, the "opposition" cannot be regarded in any serious light. It will be curious to see what course is taken by the great Prima Donna. Madame Patti's engagement with Mr. Gye terminates on 31st July 1877, and she has declined to renew it at present. It is rumoured that she wishes to be free to sing in Paris during the summer of 1878, when the next Great Exhibition will be held, and also that she is not inclined to bind herself to Covent Garden without ascertaining the acoustic capabilities of the new Opera House on the Thames Embankment, or without knowing what kind of position that new establishment is likely to take in the estimation of fashionable society. Next year as usual we shall have scores of soprani and not a single tenor worthy of the name. How opera habitués sigh for the days of Rubini and Mario! Cannot you find us a *bonâ fide* tenor who can both sing and act in the whole wide range of Hindustan? There is not one in Europe! Theatres flourish, but there is no medium between Shakespeare and the Opera Bouffé. A good sterling comedy seems unknown in these days. The days of pantomine are close upon us, to remind thoughtless youth that another precious year has well-nigh flown.

I am, &c.,

PERIPATETIC.

LONDON, 13*th October* 1876.

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HIGH COURT—MADRAS.

HOLLOWAY AND KINDERSLEY, JJ.

Malabar law—Kovilagom—Manager—Suit for removal—

Where, in a suit for the removal of the manager of a Kovilagom (or joint royal property) in Malabar, on several charges of mismanagement and misconduct, and the Sub-Judge dismissed the suit on the finding that she had managed the property faithfully and had committed no single act of misconduct, but recommended in his decree that she should dismiss the agent employed by her—

HELD, *confirming the Sub-Judge's dismissal of the suit, that his doctrine that one single act of misconduct afforded sufficient ground for the removal of a Karnaven was not sound, because such removal ought to take place only on paramount ground of necessity; and that although it was well that the agent should be got rid of, the Courts could not embody in a decree that which they have no right to order; their business not being with counsels, but with precepts.*

R. A. 24 *of* 1876.

Elaya Thamburathi of Puthia Kovilagom and another *v.* Valia Thamburathi of Puthia Kovilagom.

THIS was a Regular Appeal against the decree of the Subordinate Court of South Malabar in O. S. 32 of 1874.

The facts of the case are fully set out below :—

"This was a suit to remove defendant from the management of the affairs of the kovilagom property and to recover costs. Plaint recites that plaintiffs and defendant belong to the same kovilagom (royal house) of which the latter is the manager, that the first plaintiff is the younger sister and immediate heir of defendant, and the second plaintiff the person who holds the stanom of Mutha Rajah, that defendant has failed to give the full amount of the customary maintenance to the members of the family and to perform the marriage of first plaintiff's grand-daughter and other princesses who have attained their age, that she (defendant) has granted kovilagom property on an additional kanom of Rupees 4,275 to the persons who are entered as Nos. 1, 2, 3, 4 and 5 in the Schedule A, that she has appropriated money to her private use; that she has executed a new perpetual deed on kovilagom property to No. 6 and karars for forty-eight years to Nos. 4 and 8 and for twenty-four years to No. 7, that she gave the persons named in Schedule C Rupees 29,000 inclusive of Rupees 24,725 collected on account of claims under renewed demises of kovilagom property and of other amounts as specified in Schedule B, and has secretly appropriated the amount by taking bonds in the name of her beloved kariasten Subramanien Patter that the annual malikana (pension) amount of Rupees 9,000 and the yearly profits derived from the lands and parambas belonging to the kovilagom are sufficient for defraying the kovilagom expenses; and that the cause of action accrued in Makarom 1049, January, February 1874, the date on which plaintiffs became aware of the mismanagement of the defendant. The defendant denies the truth of the plaint in toto, and contends that Court fees should be levied in this case on the amount of the full income of the kovilagom and the devasam appertaining thereto; that this suit which was instituted by the plaintiffs alone without including all the members of the kovilagom, is untenable; that it is likewise irregular for absence of any prayer to appoint another person in defendant's stead; that second plaintiff has no authority to conduct the affairs of the kovilagom, and the first plaintiff is incompetent; that she has not done any acts injurious to the kovilagom nor caused the same to be done; that on the contrary she has done several acts beneficial to the kovilagom; that she has regularly paid the maintenance to the families, that the Thamburathies (princesses) have not exceeded the usual age of marriage; that the delay was owing to the non-arrival of an auspicious moment and to uncontrollable circumstances; that the amount shown as No. 5 was not obtained as additional kanom, nor was a demise granted for forty-eight years as that marked No. 8; that the description in Schedule A of the nature of the transactions Nos. 1 to 4, 6 and 7 is erroneous; that the amounts Nos. 1 and 3 were obtained to pay off judgment debts, and debt No. 2 was contracted for repairing the kovilagom and No. 1 was a loan; that a right to hold for thirty-six years only was granted to the person shown as No. 4; that all these acts were done to meet the lawful necessities of the tarwad; that a perpetual deed was executed to No. 6 on his relinquishing the Palisha mataka right (otti) which he held from the former jenmee; that an extension of another twelve years was allowed to No. 7 in consideration of his voluntary labour by which some accretions were made to kovilagom property; that except a portion of the property demised to No. 4 as above, the rest with land No. 6 was lost possession of in execution of decrees; that no decree was passed for the payment to her of the amount shown as No. 3 in Schedule B, nor was any money recovered thereunder; that amount No. 4 was paid to Virarayen *alias* Unni for the

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expenses of the Pinnom and other ceremonies performed on the demise of the late Elankar; that only Rupees 660 were received on account of the kuttikanom entered as No. 5; that she did not get bonds executed in the name of Subramanien Patter as stated in Schedule C; that she has no right to the amount of those bonds; that the income from the common property of the kovilagom which she manages and the Malikana she gets are just sufficient to cover the daily expenses; that any extraordinary expense is met from the amount recovered by her on account of the kovilagom and from the money obtained by renewals and loans; and that these were done in the presence of the kovilagom Rajahs.

The following are the issues settled by the late Subordinate Judge:—

I. Whether the Court fees properly leviable by law in this suit have been paid?

II. Whether the plaintiffs have any right or authority to sue exclusively for the removal of the defendant from the administration of affairs on the ground of her mismanagement?

III. Whether the suit is irregular for absence of prayer in the plaint for the appointment of another person in the place of defendant?

IV. Whether the first plaintiff is competent to manage; and in what manner do Thamburathies conduct the affairs in kovilagoms?

V. Whether the defendant did any acts prejudicial to, or destructive of, the kovilagom interests?

VI. Whether the defendant maintains the families properly?

VII. Whether by the wilful negligence of defendant to celebrate a marriage, a princess attained her puberty without being married; whether this was discreditable to the kovilagom; and whether such negligence will disqualify defendant for management?

VIII. Whether the rights admitted to have been granted by defendant in perpetuity and for thirty-six and twenty-four years were granted for proper purposes of the tarwad?

IX. Whether defendant is guilty of misfeasance and malfeasance as alleged in the plaint?

X. Whether as stated in the plaint, the defendant got bonds executed in the name of Kander Kuttale Madathil Subramanien Patter for moneys belonging to the kovilagom?

The invincible repugnance to giving judgment in an original suit which was not tried by me has been the cause of a little delay; but with the consent of all parties I, proceeded to dispose of the case upon the evidence recorded by my friend the late Subordinate Judge. Going first into the preliminary objections, I find that the questions raised by the first and second issues are of no force. In a case of this nature, the suit may be brought by all or any of the members of a family who have all an equal life-interest in the property thereof, provided that the suit be for the advantage of that property. Again, a suit for the removal of a mismanager from office may be valued on one single act of mismanagement or on groups of such acts. The effect is all the same. If one clear and unaccountable act of mismanagement can be brought home to the defendant, she would just as well be liable to be removed from the office as if several such acts had been brought home to her. The result being thus the same, it is optional to found the suit on one single act of misconduct or on a group of such acts, and the valuation of the suit and the Court fee to be paid must be regulated accordingly. This has been done here; and the argument that Court fee should be paid upon the whole kovilagom property is absurd. In the objection raised by the third issue there is perhaps some force. In going then into the merits of the case, we have chiefly to consider the alleged acts and omissions of the defendant and see how far they render her unfit for management. The first act complained of is the granting of a new kanom of Rupees 1,000 to one Krishna Thambi, but this amount appears to have been raised to meet a proper necessity of the kovilagom, namely, the payment of a judgment debt (*Vide*, XI). The other new kanoms are also proved to have been raised either for payment of judgment debts, or for the repair of the kovilagom buildings, both which are proper necessities. There are various decrees and receipts put in by the defendant to show payment of judgment debts by her (Exhibits 13, 14, 15, 20, 21). Then as regards the granting of a perpetual lease and kanoms for unusually long periods, the defendant has shown good reasons for doing so. The perpetual lease appears to have been granted to one who in her opinion, which opinion may perhaps be somewhat faulty in the eyes of a lawyer, for the man held only a kanom and not otti under G, held a right of pre-emption over the property of which she was only a subsequent purchaser. So far therefore as the records of the former suits connected with this property show, the defendant's motive for granting the perpetual lease was a desire to purchase the objection set up against her jenmom purchase and not to dissipate kovilagom property. The plaintiffs' sixth witness' evidence to the contrary is not entitled to belief as it is

inconsistent with his former conduct. Moreover it can hardly be now said that the kovilagom has suffered any loss at all by this transaction. The property has since found its way back into the possession of its original jenmee, and there is therefore no pretence even for now saying that the perpetual lease subjects the plaintiffs even to any imaginary grievance. This remark will also apply to the thirty-six years' kanom granted to Paru Ammal. The granting of another twelve years to Srambikul Ramen Menon was in consideration of his voluntary services which resulted in the discovery of new lands and demarcation of old lands belonging to the kovilagom. To P. Karunakara Menon no kanom of forty-eight years was given according to the defence, and there is no evidence on the part of plaintiffs in support of their allegation that such has been given him. Again, according to plaintiffs' own showing, all the above transactions were conducted by the defendant not individually, but through the agency of the senior Rajah of the kovilagom for the time being, and this precludes every supposition of fraud in her dealings. Until 1045 (1879-1870) it is admitted by the plaintiffs themselves that the first plaintiff's own son was the defendant's adviser and agent in the management of the kovilagom affairs. It is hard, nay even unjust, now to charge the defendant with acts for which she was not thus solely responsible. The rule of management in kovilagom, as is proved and admitted on all sides, is that the senior Ranee should conduct the management through the agency of the senior Rajah; and to this rule the defendant has always adhered, except from 1045 (1869-70) since which time it is in evidence that the senior and every other Rajah declined to take part in the management, probably from the proved fact that nothing is to be got out of it since the expenditure exceeded the income. I find that none of the above dealings of the defendant has subjected the kovilagom to any appreciable loss; that they were all entered into *bonâ fide*, with due regard to the kovilagom interests and with sufficient authority; and that therefore they would not render her unfit to continue in management. Considering also the long period during which she has had the management, which circumstance is in itself some proof of her good management, the various litigations she has carried on apparently for the advantage of the kovilagom, and the various houses built and ruined-temples restored by her for the welfare of the kovilagom, some allowance I think must be made in her favour for any slight shortcomings in her long administration, as even the wisest of men is liable to err. The next accusation against her is that she is defrauding the kovilagom by taking bonds in her kariasten's private name for moneys belonging to the kovilagom. The plaintiffs have wholly failed to make out this charge. On the contrary their own second, third and eighth witnesses, the executants of those bonds, state that the money due under those bonds did not belong to the kovilagom, but to the kariasten Subramanien Patter himself in whose favour they are executed. The fourth witness states that the money belonged to defendant's daughter; even if so, it is not the common property of the kovilagom. It is however no doubt a suspicious circumstance that this Patter, who was but a cook till some sixteen years ago and who had no property to speak of till 1028 (1852-3) (A), should have risen so high in wealth within this short space of time as to be able to deal in so large sums of money; but mere suspicion is not sufficient to produce conviction, without which it is unsafe to hold that the money belongs to somebody to whom the bonds do not show it to belong. The plaintiffs' case on this point was that the real fact of the matter is otherwise than as stated in the documents, and they were therefore bound to prove this by some very strong evidence which they have failed to do. The next charge is that the defendant is not giving proper maintenance to the members of the family. It is in evidence (VI), that these plaintiffs were themselves satisfied that the income from the kovilagom property was scarcely sufficient to maintain the kovilagom without contribution from private funds, and the accounts of receipts and disbursements filed on defendant's side also show this. It is not denied that the defendant is maintaining the family, but the only dispute which plaintiffs raise is that the amount paid is not sufficient. I find that what is now paid is all that the means of the kovilagom will admit of, and the plaintiffs have failed to adduce evidence that the means will admit of paying anything further. That the various departments in the household are well managed is proved by the servants in each of such departments. Then comes a charge of not celebrating a marriage. According to plaintiffs' own showing and the evidence of the mother of the princess in question, twelve is the maximum age within or at which a princess' marriage (the Tali tying ceremony) should as a rule take place, and it is clear also from plaintiffs' own witnesses (five and twelve in particular) that the princess in question attained puberty at the uncommonly low age of eleven. This is not the fault of the defendant. It is admitted by the first plaintiff herself, and by the mother of the said princess, that there was no apathy on the part of the defendant in the cause of the marriage, that she consulted the first plaintiff once or twice as to the expediency of performing the ceremony, but deaths in the family and the obstruction by a certain member in the family to the taking of necessary funds (*vide* Exhibits 29 and 30) from the treasury necessarily put off the marriage, and that she (defendant) had no reason to anticipate that

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this princess would attain puberty in such an unusually early age as eleven when her elders of fourteen and fifteen, whose marriages had already been celebrated, were still below puberty. Howsoever disgraceful therefore the attainment of puberty by the princess in question may be, it is clear that it is not the result of any unjustifiable act or omission on the part of the defendant. On the whole I am satisfied that there is not sufficient ground shown by the plaintiffs to warrant the removal of the defendant from the management of the kovilagom and I would dismiss their suit for that purpose but for better safety of the kovilagom interests for the future, I am inclined to think that the defendant would do well to manage the affairs as she did till 1045 (1869-70) through the agency of the second plaintiff the present senior Rajah of the kovilagom instead of the Patter, whose conduct is tainted with suspicion. The origin of the whole suit is, as will be seen from the record, the existence of dissension in the kovilagom and I will therefore allow no costs."

From this decision plaintiffs appealed to the High Court on the ground that the decree of the Subordinate Judge is against the weight of evidence; that the defendant only possessed a life-interest and could not legally grant perpetual leases; that the defendant could not legally grant kanoms, unless for the benefit of the kovilagom; that the defendant could not legally grant kanoms for unusually long periods even where the money raised was required for kovilagom purposes; that the kovilagom property is not liable for the debts of the defendant; that the kanom granted to Srambikal Ramen Menon, was unnecessary, and not binding on the kovilagom; that the fact that the whole or any portion of the above transactions were conducted by the defendant not individually, but through the agency of the senior Rajah of the kovilagom for the time being does not alter their character; that the defendant is at any rate responsible for her acts since 1869 and 1870; that the defendant is bound to maintain the plaintiffs according to the social position occupied by them; that the defendant is bound to perform the marriage ceremonies of the Thamburathies before they arrive at their eleventh year; and that the defendant was not justified in taking bonds in the name of Subramanien Patter.

Spring Branson for appellant.

A. Ramachendra Iyer for respondent.

The High Court delivered the following

Judgment:—1st *September* 1876.

As we stated at the hearing, we were quite unable to agree with the doctrine of the Sub-Judge that single act of misconduct afforded sufficient ground for the removal of a Karnaven. Such removal ought to take place only on paramount ground of necessity. Despite this doctrine, too favorable to the plaintiff, his suit has been dismissed and very rightly; a weaker case of the kind was never presented.

We have felt bound to remove from the decree the words, which recommend the employment of one of the males by the defendant to assist her. It would undoubtedly be well if this agent was got rid of, but the Courts cannot embody in a decree that which it has no right to order. Its business is not with counsels but with precepts.

The plaintiffs appeal is dismissed with costs. No costs of the cross appeal.

HIGH COURT—CALCUTTA.

[*Original Civil.*]

GARTH, C. J., AND PONTIFEX, J.

Jurisdiction—Suit for Land—Letters Patent, 1865, *Clause* 12—*Deed of Trust giving Trustees Power of Sale of Land in the Mofussil—Suit by Creditor to have Trusts carried out.*

M and L were the joint absolute owners of certain land in the Mofussil, M having a 14-*anna share, and L the remaining* 2-*anna share therein. During the absence of L in England, M executed, on behalf of himself and L, a deed of assignment of the whole of the property to trustees, for the benefit of the creditors of the estate, which was heavily encumbered, on trust to sell the land and distribute the assets to the creditors. The trustees accepted the trust, but difficulties afterwards arose in carrying them out. A suit was thereupon instituted by the plaintiff, a creditor, on behalf of himself and the other creditors, the plaint in which alleged that the trustees were desirous of being discharged, and prayed that the trusts might be carried into effect; that the trustees might be removed; and that a Receiver might be appointed to carry out the trusts. To this suit the trustees and M and L were made defendants. L, who was in England, denied any power in M to execute the deed on his behalf: the trustees and M were personally subject to the jurisdiction.*

HELD *per* Phear, J., *in the Court below, that the*

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plaint disclosed a good cause of action, as the Court, if it had jurisdiction, would have power to make a declaration binding against L as to the validity of the deed of trust, to appoint a Receiver of the estate, and to direct a sale which would be binding on M and L; but that the suit being one "for land" within the meaning of Clause 12 of the Letters Patent the Court had no jurisdiction to try it.

Held *on appeal that the suit, having for its object to compel a sale of the whole of the land, including L's share the title to which was disputed, was a "suit for land" within the meaning of Clause 12 of the Letters Patent, and that the Court had no jurisdiction to try it.*

The Delhi and London Bank *v.* Wordie and others.

Appeal from a decision of Phear, J., dated 2nd February 1876.

The suit was brought to carry out the trusts of a certain deed which had been executed for the benefit of the creditors of W. E. Morrell and H. N. Lightfoot, and which related to certain immoveable property situated outside the local limits of the jurisdiction of the High Court. The plaintiff Bank represented the creditors interested in the deed, and the original defendants were T. H. Wordie and T. Longmuir, the trustees, who were both resident in Calcutta.

The plaint stated that Morrell and Lightfoot were co-partners in the property to which the trust deed related, the former having a 14-anna share, and the latter a 2-anna share in the property; that the property was, prior to the execution of the trust deed, heavily encumbered, the plaintiff Bank being creditors of Morrell and Lightfoot and mortgagees of certain portions of the property; that on the 14th May 1875, Morrell on his own behalf, and as attorney for Lightfoot who was then absent in England, executed a deed by which all their property, subject to the encumbrances, was assigned to the defendants upon certain trusts, among which was one to the effect that the trustees should call in and collect such part of the estate as consisted of money, and sell and convert into money the landed property, and should, out of the assets, so far as they were sufficient for the purpose, discharge the liabilities of the debtors; that the defendants accepted the trusts of the deed and appointed Morrell to manage the property; but subsequently, by reason of certain complications which arose in carrying out the trusts, the defendants became desirous that they should be relieved from carrying them out, and that a Receiver should be appointed to collect and distribute the assets. The plaint prayed that the trusts of the deed might be carried into effect, that the defendants might be removed and relieved from further carrying out the trusts, and that a Receiver might be appointed to carry out the trusts of the deed.

The defendants Wordie and Longmuir filed a written statement, in which they stated that they were desirous of relinquishing the trusts, but were willing to carry them out under the direction of the Court. On the case coming on for settlement of issues, Phear, J., ordered on the application of Morrell to be made a party to the suit, that Morrell and Lightfoot should be made defendants in the suit, and appointed the Receiver of the Court to take possession of the property and carry out the trusts of the deed.

The defendant Morrell submitted (*inter alia*) that as the estates referred to in the deed were situated beyond the local limits of the Court, the Court had no jurisdiction to entertain the suit. The defendant Lightfoot, who resided in England, filed a written statement, in which he denied that Morrell had any authority to execute the deed of assignment on his behalf and submitted that he was not bound thereby, but that the deed was void and inoperative as against him.

The only issues material to this report were first "whether the plaint discloses any cause of action," and second "whether the Court has jurisdiction in the matter of the suit, the immoveable property mentioned in the plaint being admittedly out of the jurisdiction, when the defendant Lightfoot denies the execution of the deed of assignment comprising such estate, and is not personally subject to the jurisdiction."

Phear, J.—The first issue, which I am called upon to decide, is in these words, "whether the plaint discloses any sufficient cause of action;" and I feel no difficulty in answering it in the affirmative. This Court as a Court of Equity, with the powers of the Court of Chancery, will, at the instance of a *cestui-que* trust, when necessary, compel an inactive trustee to do his duty, or facilitate a trustee's doing his duty by making declarations of fact or law, which shall bind parties properly brought before the Court for that purpose, or by acting directly upon parties before it who have control and power over the subject of the trust, and making them perform any obligations with respect to it which they may be under towards the trustee or to the *cestui-que* trust, and so on.

Now, in the present suit, the case made in the plaint is shortly as follows:—

In the events which have happened, the defendant Morrell has become sole and absolute owner of several specified grants of land

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in the districts of Backergunge and Jessore, subject to the charge thereon of certain small legacies, and the defendant Lightfoot is a partner with him in these grants and in the management and profits thereof to the extent of a two-anna share under a certain deed of partnership. Previous to and in July 1873, three large parcels of this property, which may be conveniently designated by the letters A, B and C, respectively, and which constituted all the property that was of any considerable value, were so heavily encumbered, that the net income derivable from them was insufficient to keep down the interest on the debt. Afterwards these three parcels of the property were still further encumbered by two additional mortgages for sums of money amounting in the aggregate to Rupees 44,000. The total of the encumbrances on these three parcels was thus brought up to the sum of Rupees 5,73,000, the plaintiff Bank out of this sum being creditor for Rupees 28,000 on the security of a fifth mortgage on parcel A, a fourth mortgage on parcel B, and a third mortgage on parcel C, and being besides unsecured creditor for Rupees 3,329 on a bill of exchange.

In this state of things on the 14th May 1875, the defendant Lightfoot being then absent from India, the defendant Morrell, not only acting for himself, but also professing to act for Lightfoot under a power-of-attorney enabling him so to do, executed in Calcutta a deed, by which he assigned *all* the abovementioned property, subject to the encumbrances just spoken of, and also all other property whatever of himself and Lightfoot, to the defendants Wordie and Longmuir on trust, among other things, to collect and call in all such part of the property assigned as should consist of money, and to sell and convert into money all the rest of the property, and out of the money so to be realized to pay the creditors of Morrell and Lightfoot in full or ratably so far as the money would go. The defendants Wordie and Longmuir took upon themselves the trusts of the deed, and appointed Morrell their agent to manage the property until sale, and to collect arrears of rent, &c., under their directions. In pursuance of this arrangement, the defendant Morrell who up to the date of the execution of the deed of trust, and during the absence of Lightfoot from this country had been in sole possession and management of the immoveable property assigned, took over charge of the same from himself as owner to himself as the trustee's agent. But he found or made difficulty in the matter of collecting the rents, and mofussil creditors having instituted suits in the local Courts against Morrell and Lightfoot procured attachments before judgment to be placed on that property, or considerable portions of it. The defendant Lightfoot, also, upon learning of the transaction, repudiated Morrell's act on his behalf, and giving notice of his repudiation to the trustees, forbade them to deal in any way with his share of the property assigned to them in trust. Under these circumstances, the defendants Wordie and Longmuir are unwilling to proceed further in the matter of the deed of the 14th May 1875, and are desirous of being discharged from the trusts thereof, though, in their written statement, they express themselves ready to effect a sale of the property, provided the directions and assistance of this Court for that purpose can be obtained.

The plaintiff Bank is one of the creditors, in whose favor the deed of trust purports to have been made, and it seems to me plain that, if the substance of the case set up in the plaint is established, it would be accordant with the principles which govern the action of this Court, that it should afford him a remedy for the inactivity and weakness of the trustees by making a declaration as to the validity of the deed of trust, which would be binding on Lightfoot as a party who has appeared before the Court in this suit and by appointing a Receiver of the rents and profits of the immoveable property, which is the subject of the trust, and further by directing a sale of the property which would be binding on Morrell and Lightfoot, and would therefore pass a title, which they could not dispute. The plaintiff has therefore shown a right to seek the intervention of this Court, in other words a good cause of action.

The second issue questions the jurisdiction of this Court to entertain this suit on a somewhat complex ground, and I think it will be convenient at first to separate one of the ingredients of the issue from the rest, and to consider whether or not the suit is in its nature a "suit for land" within the meaning of the twelfth clause of the Letters Patent.

Now, the cause of action in this suit, as we have just seen, does not, at any rate in any material degree, proceed from the trustees. The plaintiff wants to have a sale of the property effected, and for that purpose to have the obstacles, which arise from the conduct of Morrell and Lightfoot, and otherwise than from the trustees, removed by the Court. So far as the substance of this suit is concerned, the plaintiff's case is the same as if the trustees were out of the way, and Morrell and Lightfoot had bound themselves by covenant on sufficient consideration to sell the property and to divide the proceeds, according to the terms of the deed of 14th May 1875, among their creditors, of whom the plaintiff is one. The like transaction with the plaintiff as the sole creditor would manifestly be of the nature of a mortgage, and a suit by the plaintiff on the footing of it to obtain a realization of the charge by sale would be a suit for land within Clause 12 of the Letters Patent. It follows, I think, that the

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present suit also is a suit for land. Or to put it in another way, if the object of the suit had been to procure or sanction an immediate transfer of the land from the defendants Morrell and Lightfoot to the plaintiff, there could have been no question on the point. That the actual object is to procure the transfer of the land to a third person, who is to be subsequently ascertained by auction-sale, and of the benefit of the consideration-money to the plaintiff and others, does not I think essentially alter the matter.

In this view, the second issue must be answered adversely to the plaintiffs, and the suit must be dismissed.

The plaintiff Bank appealed from this decision, on the ground that the Judge was wrong in holding that the suit was a suit for land within Clause 12 of the Letters Patent, and that he consequently had no jurisdiction to try it.

The *Advocate-General*, offg. (Mr. *Paul*) and Mr. *Evans* for the appellant.

Mr. *Branson* for the respondents Wordie and Longmuir.

Mr. *Woodroffe* and Mr. *Macrae* for the respondent Lightfoot.

Mr. *Macrae* and Mr. *Macgregor* for the respondent Morrell.

The *Advocate-General.*—The Court has power to grant the relief prayed for in this suit: it is not a suit for land within the meaning of the Letters Patent. From the frame of the suit, the relief prayed for may be given, either by directing the trustee defendants to carry out the trusts of the deed, or by discharging the trustees and appointing a Receiver to carry them out. Neither of these orders would be beyond the jurisdiction of the Court. The Supreme Court had the power of dealing in the same way with land out of its jurisdiction as the Court of Chancery has; and the High Court, on its Original Side has, by Section 9 of 24 and 25 Vic., Cap. 104, the same power in this respect as the Supreme Court, except so far as it has been altered by Clause 12 of the Letters Patent. If not excluded by the words of that clause this suit will lie. It is submitted that "suit for land" means "suit for possession of land." Suits in which a Court of Equity makes orders *in personam*, though the subject-matter of the suit is out of the jurisdiction are not considered suits for land—*Penn* v. *Lord Baltimore.** So an order for carrying out the trusts of the deed in this suit would not be a suit for land. [Garth, C. J.—Refers to *Abbott* v. *Abbott*,† where it was held that an order directing a Receiver to sell land out of the jurisdiction was not *ultra vires.*] The latest case is *Jugyodumba Dossee* v. *Puddomoney Dossee.** All these cases show that merely because a declaration is made with respect to land in a suit, that does not make it a suit for land—there are suits in which such declarations may be made which are not suits for land. As to the cases here this Court has held it has power to declare a trust in respect of lands in the mofussil.—*Bagram* v. *Moses.*† Suits for foreclosure and redemption are not suits for land, though there have been decisions the other way. See *Bibee Juun* v. *Meerza Mahomed Hadee*‡ and *S. M. Lalmoney Dossee* v. *Juddonath Shaw.*§ The latest English decision however holds that such suits are not suits for land—*Paget* v. *Ede.*|| And where there is no prayer for possession, as if the mortgagee is in possession, a suit for foreclosure is not a suit for land—*Blaquiere* v. *Ramdhone Doss.*¶ The decisions of the Courts here as to such suits must not be considered conclusive. [Garth, C. J.—Have there been any cases here in which the Court has decreed specific performance of contracts relating to land?] Yes, in *Ramdhone Shaw* v. *S. M. Nobumoney Dossee,*** such a suit was entertained where the parties were resident in the jurisdiction. [Pontifex, J.—Refers to *Carteret* v. *Petty*,†† where a partition of lands out of the jurisdiction of the Court of Chancery was refused.] A decree for an account however was given in that case, see also *Houlditch* v. *Donegal*‡‡ and Seton on Decrees, page 1038. It is submitted then that the Court has power to order the trustees to carry out the trusts of the deed. But the plaintiff contends further that the Court has power to remove the trustees and appoint a manager to carry out the trusts. The words of the Charter do not deprive the Court of jurisdiction it had previous to the Charter, nor has such jurisdiction been otherwise taken away. The Supreme Court had power to make such orders where the land was out of the jurisdiction—*Doe* d. *Bampton* v. *Petumber Mullick*,§§ *Doe* d. *Muddoosudun Doss* v. *Mohenderlall Khan*,|||| *Doe* d. *Chuttoo Sick Jamadur* v. *Subbessur Sein*,¶¶ and *Turramoney Dossee* v. *Kistnogovind Sein.**** [Garth, C. J.—I have some doubt at present whether a "suit for land" means more than a suit for possession of land, and whether it includes suits relating to or concerning land. Here however you ask for possession. I can understand a Receiver being appointed to

* 1 Ves. Sen., 444; S. C., 2 White and Tudor's Eq. Cas., 4th Ed., 923.

† L. R., 6 P. C., 220.

* 15 B. L. R., 318.

† 1 Hyde, 284.

‡ 1 I. J., N. S., 40.

§ *Id.*, 319.

|| L. R. 18, Eq., 118.

¶ Bourke, 319.

** Bourke, 218.

†† 2 Swanst., 323 note.

‡‡ 8 Bligh., 301.

§§ 1 Bignell, 24.

|||| 2 Boul, 40.

¶¶ *Id.*, 151.

*** 2 Morley's Digest, 61.

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receive rents where another person is in possession: but here you want the Receiver put in possession.] It is not a question of getting an order for possession; the trustees might be discharged conditionally on their putting the Receiver in possession. The plaintiff does not want the trustees removed at all, unless they are desirous of being discharged.

As to the defendant Lightfoot being out of the jurisdiction, that does not prevent the suit from proceeding. See *per* Peacock, C. J., in *Sterling* v. *Cochrane.** On the ground of convenience the arguments in favor of the suit being tried in this Court are unanswerable. A Mofussil Court could not carry out the trusts, or give the plaintiff the relief he prays for.

Mr. *Evans* on the same side referred to several cases in which the Court had made orders with respect to land out of the jurisdiction—*Macrae* v. *Macneill*, decided by Macpherson, J., on 14th May 1873. It was attempted in that case to distinguish it from *Bagram* v. *Moses*,† inasmuch as in the latter case the defendant was personally subject to the jurisdiction, whereas in *Macrae* v. *Macneill* he was not. Macpherson, J., there dealt with the question of the title to the land, but refused to give possession. *Macdonald* v. *Scott*, 15th September 1873, decided by Macpherson, J., in which a right was decided as to a share of a Tea Garden in Assam, and a case of the same name before Pontifex, J. [Pontifex, J.—There the point was not taken.] No, but land out of the jurisdiction was dealt with—*In re the Tagore estate*, where the old trustees were removed, and the Official Trustee was appointed trustee of lands at Rungpore. The Bombay High Court has held that a suit for the rent of lands in one district may be brought in another district where the defendant resides, although the plaintiff's title to the lands may incidentally come into question—*Chintaman Narayan* v. *Madhavrav Venkatesh.*‡

Mr. *Macrae* for the respondents Morrell and Lightfoot.—The cases cited by Mr. Evans are distinguishable in that the primary object of those suits was not for land. They come within the principle of the case of *Penn* v. *Lord Baltimore*,§ which we do not dispute. The person suing here is identical with the trustees: the plaint is verified by one of the defendants. Longmuir, the agent of the plaintiff Bank, is suing himself as one of the trustees. The trusts the plaintiff seeks to have carried out in this suit are such as are calculated to give the trustees in an indirect way beneficial possession of the land: that is the real scope and intention of the trust deed. [Pontifex, J.—Cannot we make a declaration of trust?] Not at any rate until the deed has been proved to be valid against Lightfoot: that is one of the questions raised by him. The whole case must be taken as stated in the pleadings. As in a recent case—*The East Indian Railway Company* v. *The Bengal Coal Company**—the plaint may, on the face of it, show jurisdiction, but, when the defence is disclosed, it may appear to be a suit for land. [Garth, C. J.—Suppose it were proved that Lightfoot is bound by the deed, would not the Court have jurisdiction to give what is asked for?] No, not to carry out the trusts of the deed: because to carry them out would be dealing with land in a way which is prohibited by the words of Clause 12 of the Letters Patent, *i. e.*, entertaining a suit for land out of the jurisdiction. [Garth, C. J.,—If Lightfoot is bound his interest is in the trustees, and the Court might make an order that the trustees should carry out the trusts of the deed.] If Lightfoot were not a party to the suit, it would be a different suit: as it is, the real object is to obtain a declaration that a portion of the land is not Lightfoot's, but belongs to the trustees, on the allegation that Lightfoot transferred it to them.

The words of Clause 12 "suit for land" are, no doubt, vague, but a long course of decisions has interpreted them as meaning more than "suit for possession of land." There is no need to go back to see what the jurisdiction of the Supreme Court was, as it brings us to the same question as to whether it is a suit for land. The latest case is *The East Indian Railway Company* v. *The Bengal Coal Company*,† the object of which was to settle disputed boundaries. [Garth, C. J.—That was clearly a suit for land. Is a suit for trespass to land a suit for land? It is so in England, for it is often brought admittedly to try title to land. *The Advocate-General.*—*Rajmohun Bose* v. *The East Indian Railway Company*‡ decided that a suit for trespass to land was not a suit for land.] That was the case of a nuisance, not of trespass to land. In *In re Leslie*,§ it was held that a suit on a mortgage for a decree for the amount due on it, or in default of payment for sale of land, was a suit for land; and see the cases referred to by Markby, J., in that case at page 177. In *Denonath Sreemony* v. *Hogg*,‖ it was held that the Court could not deal with land in the Mofussil, even though it was in the possession of the Court Receiver. *Juggodumba Dossee* v. *Puddomoney Dossee*¶ was decided on the ground that the deed gave none of the parties any beneficial interest in the land: besides there all the parties were personally

* 1 B. L. R., O. C., 125—127.
† 1 Hyde, 284.
‡ 6 Bom. H. C., A. C., 29.
§ 1 Ves. Sen., 444.

* I. L. R., 1 Cal., 95.
† I. L. R., 1 Cal., 95.
‡ 10 B. L. R., 241.
§ 9 B. L. R., 171.
‖ 1 Hyde, 141.
¶ 15 B. L. R., 318.

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subject to the jurisdiction. *Bagram* v. *Moses** decided that the Court had jurisdiction to declare that a party held land subject to a trust. We don't wish to question that. But more than that is wanted in this case. In *Ramdhone Shaw* v. *Nobumoney Dossee*† the contract was made within the jurisdiction. *Sterling* v. *Cochrane*‡ on the facts does not uphold the position it was cited to support. Whenever the main object of the suit is the possession of land, the suit is a suit for land. That was not the object in *Abbott* v. *Abbott*,§ and therefore the Court held it had jurisdiction to make an order as to the land. The main object of this suit is to take land from Lightfoot and Morrell, and vest it in the trustees. It is submitted it must be held to be a suit for land.

Mr. *Branson* rose to address the Court for the trustees, but on the objection of Mr. *Woodroffe* that he ought not to be heard at this stage, the plaintiff Bank and the trustees being in the same interest, the Court refused to hear him.

Mr. *Evans* in reply pointed out that there was no identity between the plaintiff Bank, and Longmuir as a trustee. The Bank was a creditor, but nothing was due to Longmuir. The other side say they don't desire to question the decision in *Bagram* v. *Moses*.|| Now here the trustees are in absolute possession of at any rate fourteen-sixteenths of this property and of the other two-sixteenths as partnership assets. Cannot the Court make a declaration of trust, which can be carried out? [Garth, C. J.—But they have not possession of the two-sixteenths if Morrell had no power to transfer it to them.] Morrell transferred it to them for his partner. If the Court has jurisdiction, is that jurisdiction to be ousted because a third person comes in and claims a portion? If our allegation that Lightfoot joined in transfering his interest gives the Court's jurisdiction, traversing that allegation does not take away the jurisdiction, but the issue should be tried whether or not he did transfer his interest. [Garth, C. J.—It appears to me that as to the two-sixteenths it is a suit for land, and even as to the rest, I have great doubt whether it is not. What do you say as to Lightfoot's share?] It is vested in the trustees as a part of the partnership assets, the assignment of which might give Lightfoot a right to dissolve, or perhaps create a dissolution. If there is some portion of the land in the possession of the trustees, as to which the suit is not a suit for land, then it is submitted the Court has jurisdiction, although the title to another portion arises incidentally—*Chintaman Narayan* v. *Madhavrav Venkatesh*.¶ [Pontifex, J.—I am by no means certain that as to the fourteen-sixteenths it is not a suit for land.] The trustees have accepted the trust, the assignor admits that they are trustees, and that he has assigned to them, and they are admittedly in possession of that portion. That is the case of *Bagram* v. *Moses** an admitted trust by persons in the jurisdiction. Can the Court then not make a personal order on the trustees? [Pontifex, J.—In the case of *Juggodumba Dossee* v. *Puddomoney Dossee*,† express care was taken in the decision to make it plain that there was not in any of the parties any beneficial interest in the land.] In that case, there was a claim to manage the land against parties who were in possession. Management of land implies practically possession of land. The order made in that case was one which made a change in the management or possession of land, and was therefore one affecting land. If Clause 12 is to paralyse the Court's action in every case in which there happens to be a piece of land out of the jurisdiction, great inconvenience will arise: for there is no other Court which could try such suits or which can give us the relief we ask for in this. The mere existence of a trust is a sufficient cause of action to enable the *cestui-que* trust to ask a Court of Equity to administer it. On the decisions of this Court, it is clear the Court has power to deal with a suit, even though a question of title to land out of the jurisdiction should arise incidentally. Here there is a good trust as to a large portion of the property. The principle of *Bagram* v. *Moses** is the proper one to apply to such a case as this.

Cur. adv. vult.

The judgment of the Court was delivered by

GARTH, C. J.—In this case, we think that the judgment of the Court below should be affirmed, upon the ground that the Court had no jurisdiction to entertain the suit.

The plaintiffs were, at the commencement of the year 1875, creditors of the defendants Morrell and Lightfoot to a very large amount. Morrell and Lightfoot were the owners at that time of certain land in the districts of Backergunge and Jessore, Morrell being entitled to a 14-anna share, and Lightfoot to a 2-anna share, in those lands. Morrell and Lightfoot were indebted, at that time, to several creditors, and the defendant Lightfoot, had left this country, and given Morrell certain powers-of-attorney to act for him during his absence. In this state of things, on the 14th May 1875, Morrell, acting not only for himself, but professing to act for Lightfoot also, under the powers-of-attorney, executed in Calcutta a deed by which he conveyed the said lands (amongst other property) to the defendants Wordie and Longmuir, in

* 1 Hyde, 284. † Bourke, 218.
‡ 1 B. L. R., O. C., 125.
§ L. R., 6 P. C., 220. || 1 Hyde, 284.
¶ 6 Bom. H. C., A. C., 29.

* 1 Hyde, 284. ‡ 15 B. L. R., 318.

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trust, to call in such part of the property as consisted of money, and to sell and convert into money all the rest of the property, including the said lands; and, out of the money so to be realized, to pay the creditors of Morrell and Lightfoot, either in full, or ratably, as far as the money would go.

The defendants Wordie and Longmuir took upon themselves the trusts of the deed, and appointed Morrell their agent, to manage the property until the sale under their direction. The trustees, however, found considerable difficulty in carrying out the trusts; and the defendant Lightfoot, upon hearing of the deed, repudiated the transaction altogether, and denied, and still denies, Morrell's authority to deal thus with his share of the property under the powers-of-attorney. Upon this, Wordie and Longmuir were unwilling to proceed any further in the execution of the trusts, and were desirous of being discharged from their responsibilities under the trust deed; whereupon the plaintiffs, as creditors largely interested under that deed, instituted this suit, praying that the trusts of the deed might be carried into effect, that the trustees might be relieved from the execution of the trusts, and that a Receiver or Manager might be appointed to carry out the trusts under the order of this Court.

To this suit an objection has been raised, on behalf of the defendants Morrell and Lightfoot, that the Court has no power to entertain such a suit, inasmuch as it is a "suit for land" within the meaning of the 12th clause of the Charter, the land being situated in the mofussil.

The plaintiffs contend that this is not so; that the lands, which are sought to be affected, are only a portion of certain partnership properties belonging to Morrell and Lightfoot; and that the object of the suit is merely to enforce the carrying out of a trust created by Morrell for the joint benefit of Lightfoot and himself, and in order to effect a beneficial arrangement with their joint creditors.

In support of this view, several authorities have been cited on behalf of the appellants, all founded more or less upon the principle laid down by Lord Hardwicke in *Penn* v. *Lord Baltimore** and in the notes upon that case, that Courts of Equity will exercise their powers *in personam*, in the case of trustees and others resident within their jurisdiction, to oblige such persons to perform trusts, to carry out contracts, and to obey the rules of equity, even where the subject-matter of the trust, or contract, or equity, may be land situate out of their jurisdiction; see *Bagram* v. *Moses*,† and *Paget* v. *Ede*.‡

But those cases are all more or less distinguishable from the present, which depends not so much upon the jurisdiction generally exercised by Courts of Equity, as upon whether this suit is brought substantially "for land;" that is, for the purpose of acquiring title to, or control over, land, within the meaning of a particular clause in the Charter; and we think, having regard to what is the real object of the suit, and to what are the rights and contentions of the respective parties, it is impossible to say that this is not substantially a suit for land.

The express purpose of the suit is to compel the sale of the whole of the land conveyed by the trust deed, including Lightfoot's share. But then Lightfoot objects that his share is not subject to the trust at all, because Morrell had no power, or authority, to deal with it; and, therefore, one of the main points which the plaintiffs seek to establish, and which they ask the Court to decide, is the title of the trustees to Lightfoot's share. Surely, in that respect the suit is, strictly speaking, one "for land."

But then the plaintiffs say that is not the sole, or primary, object of the suit; and that, as regards Morrell's share in the property, which is by far the largest portion of it there is no question as to the trustees' title. But it was repeatedly, during the argument, put to the learned Counsel for the plaintiffs, and distinctly admitted by them, that it would be impossible for the Court to deal effectually with the case, unless Lightfoot's share were included, as well as Morrell's.

That being so and the suit being confessedly instituted for the purpose of dealing with the lands in their entirety, and these lands being by far the larger portion of the partnership assets, we are of opinion that this is in substance a suit for land within the meaning of the clause in question, and that the judgment of the Court below was perfectly correct.

The appeal will therefore be dismissed with costs on scale No. 2.

Attorney for the appellants: Mr. *Adkin*.

Attorneys for the respondents: Mr. *Knowles*, Mr. *Upton*, and Messrs. *Dignam* and *Robinson*.—*The Indian Law Reports*, Vol. I, p. 249.

[*Appellate Civil.*]

JACKSON AND MCDONELL, JJ.

Lessor and Lessee—Lease granted while Lessor is out of Possession—Rights of Lessee—Suit for Possession.

A transfer of property, of which the transferor is not at the time of the transfer in possession, is not ipso facto *void.*

* 2 White and Tudor's Eq. Cas., 4th Ed., 923.

† 1 Hyde, 284. ‡ L. R., 18 Eq., 118.

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Where a patnidar, while out of possession of the patni estate, granted a durpatni thereof.

HELD, *that the durpatnidar's suit against third persons, who were in possession of the estate, to recover possession would lie, it appearing that the plaintiff had paid an adequate consideration for the durpatni, and that the durpatni potta was not evidence of a contract to be performed in future on the happening of a certain contingency, or that if it were so that the plaintiff had done all he was bound to do to entitle him to specific performance of the agreement by the patnidar.*

Lokenath Ghose *v.* Jugobundhoo Roy.*

THE plaintiff sued for a declaration of his durpatni and charpatni rights in certain estates and for possession. He alleged that he had obtained in 1278 (1871) a durpatni of an 8-anna share in the properties mentioned in the plaint from Grish Narain Roy and Mohendro Narain Roy, the heirs of Bykunt Nath Roy the patnidar of the said share; that he afterwards granted a sepatni of one of the estates to one Krishto Bullubh Roy and again took from the latter a charpatni; and that on attempting to take possession of the estates, he was opposed by the defendants.

The defendants contended, amongst other things, that the ikrar of 1278 from Grish Narain Roy and Mohendro Narain Roy in the plaintiff's favor showed that the plaintiff's title had not become complete and that neither Bykunt Nath Roy nor his heirs Grish Narain and Mohendro Narain were ever the owners of the patni or in possession thereof, and that the plaintiff had never obtained possession of the estates granted in durpatni.

The original ikrar of 1278 was not forthcoming, but a copy was put in evidence which, so far as material, was as follows :—

"*1st.* I shall pay rent for the durpatni mehal from the date on which I shall get possession thereof, and within one month from the date of my obtaining possession, I shall pay the balance of the consideration money for which I have given a bond. If I fail herein, I shall pay with interest at the rate of one per cent per month. If from any cause the crops of the entire mehal or of any portion of it are injured in the future, I shall get back from you with interest at the rate of one per cent per month consideration money in proportion to the injury which my interest will suffer, and you will also grant an abatement of rent in that proportion.

"*2nd.* From this time I shall pay out of the amount due to the zemindar whatever you have to pay into the Collectorate under assignment regarding the zemindar's sudder rent as per towji of the mehals mentioned in the patni-potta and the profit which after deducting the same, you have to pay to the zemindar. If I do not get possession of the durpatni mehals at present, you will pay me the rent which will be paid to the Collectorate and the zemindar during the said period of dispossession, with interest at one per cent per month from the amount which you will receive from other parties on account of wasilat for the period that I may be out of possession in my durpatni time. If that be deficient you will pay me yourselves. After deducting from the said durpatni rent the Collectorate rent of Rupees 5,223-5-5 and the zemindar's profit of Rupees 2,731-10-7 mentioned above, which I shall pay from the date on which I shall get possession of the entire mehal, I shall go on paying you the remaining profit of Rupees 1,100. If I fail to pay the Collectorate and zemindar's rent, and the mehal is consequently sold by auction, I shall be responsible for the loss or damages which will result therefrom.

"*3rd.* If for obtaining possession of this property I or you have to institute any suit in the Court or in the Collectorate, I shall pay the amount of costs and you will pay me that amount. If the suit is decreed you will receive the costs which will be stated in the decree and the wasilat for the period of dispossession and if it is dismissed you will pay the costs which will be incurred by the opposite party and there will be no concern with me."

The plaintiff paid the consideration for the durpatni partly in costs and partly by a bond, the due date of which had not arrived when this suit was brought.

It was admitted on the part of the plaintiff that Grish Narain Roy and Mohendro Narain Roy were not in possession when they granted the durpatni.

The first issue tried by the Subordinate Judge, and the only issue material for the purpose of this report, was whether under the terms of the ikrar executed by Grish Narain and Mohendro Narain in favour of the plaintiff the plaintiff's suit for possession would lie. This issue he decided in the plaintiff's favor, holding that the rulings cited by the defendant, *viz.*, *Raja Sahib Prahlad Sen* v. *Budhu Sing** and *Ranee Bhobosoondree Dasseah* v. *Issur Chunder Dutt*† did not apply, the facts of the present case being quite dissimilar, and that he considered

* Regular Appeal, No. 211 of 1874, against a decree of the Subordinate Judge of Zilla Moorshedabad, dated the 30th of June 1874.

* 2 B. L. R., P. C., 111 at p. 117; S. C., 12 Moore's I. A., 275 at p. 307.

† 11 B. L. R., 36.

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the cases of *Pran Kristo Dey* v. *Bissumbhur Sein** and *Tara Soonderry Debya* v. *Shama Soonderry Debya*† to be authority for the position that a transfer by one who has a right of possession, but who is not in possession, is not void on that account, and that in the present case there was no suggestion even that the plaintiff had not done all he was bound to do, and, as he had been distinctly empowered by his lessor to sue alone, that the transfer to him was complete, and that the present suit would lie. Having also decided the other issues in the plaintiff's favor he gave him a decree for possession of the half share of the several mehals. From this decision the principal defendant appealed.

Baboos *Gopal Lal Mitter* and *Lucky Churn Bose* for the appellant.

Baboos *Mohiny Mohun Roy*, *Gooroodoss Banerjee*, and *Kishory Mohun Roy* for the respondent.

The arguments raised and the cases cited appear in the judgment of the Court which was delivered by

Jackson, J., (who, after stating the facts and the holding of the Subordinate Judge on the first issue tried as above, and briefly stating the findings on the other issues, continued):—In appeal the first point argued was that the Subordinate Judge ought to have dismissed the plaintiff's case on the strength of the Privy Council Rulings cited by the (defendant) appellant. Great stress was laid upon the fact that Grish Narain and Mohendro Narain were admittedly not in possession at the time they granted the lease, which formed the basis of the plaintiff's claim, and it was pointed out that the ikrar, dated 17th Assar 1278, clearly showed that the full payment of the consideration was contingent on the result of this litigation, and that thus the suit was eminently a speculative one. The rulings cited by the (defendant) appellant before the Subordinate Judge as well as *Tara Soondaree Chowdhrain* v. *The Collector of Mymensingh*,‡ *Ram Khelawun Singh* v. *Mussamut Oudh Kooer*,§ *Boodhun Singh* v. *Mussamut Luteefun*,‖ and *Bishonath Dey Roy* v. *Chunder Mohun Dutt Biswas*,¶ were referred to in support of the appellant's contention. Now the ruling in *Tara Soondaree Chowdhrain* v. *The Collector of Mymensingh*‡ only shows that where the vendor was a defendant in the suit, and the agreement was only to sell as much as was recovered, the suit could not be maintained as contrary to public policy. In the ruling in *Ram Khelawun Singh* v. *Mussamut Oudh Kooer*,§ the principle laid down was that wherever a party executed a deed of sale of property not in his possession, this

* 11 W. R., 81.
† 4 W. R., 55.
‡ 13 B. L. R., 495.
§ 21 W. R, 101.
‖ 22 W. R., 535.
¶ 23 W. R., 165.

should be held to be only a contract to sell. In *Bhoodhun Singh* v. *Mussamut Luteefun*,* it was ruled that an assignee of property is not entitled to recover against his assignor, on the footing of a champertous contract, and that an assignee of property, whose assignor was not in possession when the assignment was made, can only recover even from the hands of third persons upon showing that he should have a right to enforce specific performance of his contract against his assignor, if the property were to come back to the hands of the assignor. The ruling in *Bishonath Dey Roy* v. *Chunder Mohun Dutt Biswas*,† lays down the proposition that alleged purchasers whose vendors were not in possession, and who pay nothing for what is said to have been sold to them, are not competent to maintain a suit for possession of the property in dispute. The ruling in *Rajah Sahib Prahlad Sen* v. *Budhu Sing*‡ has been fully discussed by the Subordinate Judge.

None of these rulings in our opinion apply to the present case. The present case was not brought for the specific performance of a contract, and there is nothing to show that the plaintiff has not performed his part of the contract. The contract may be a speculative one, but there is nothing to show that the plaintiff purchased at a sum below the value of thing sold. The stipulation in the ikrar, regarding the refusal of part of the consideration money in case of loss of the thing sold tends to show that the price paid was adequate. There is nothing in the present case to show that the durpatni potta was evidence of a contract to be performed in future on the happening of a certain contingency, or that if it were so that the plaintiff has not done all he was bound to do, if a suit for the specific performance of the contract were brought. The ikrar in the present case shows that the transfer was in substance complete. The warranty clause at the end of the first paragraph shows not only that the consideration money was paid, but that under certain contingencies it would be refunded.

In none of the cases relied on by the appellant has it been held that a transfer of property of which the transferor is not at the time of such transfer in possession would be *ipso facto* void.

The rulings in *Bikan Singh* v. *Mussamut Parbutty Kooer*§ *Chedambara Chetty* v. *Renja Krishna Muthu Vira Puchanja Naiker*,‖ and *Gungahurry Nundee* v. *Raghubram Nundee*¶ point to a contrary conclusion. In the first of these cases it was ruled that where a conveyance of property was made by a person who had been in possession and enjoyment for

* 22 W. R., 535.
† 23 W. R., 165.
‡ 2 B. L. R., P. C., 111; S. C., 12 Moore's I. A., 275.
§ 22 W. R., 99.
‖ 13 B. L. R., 509.
¶ 14 B. L. R., 307

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years before, and he was wrongfully ousted, the conveyance gave a right to sue for immediate possession. In the second the Lords of the Judicial Committee of the Privy Council pointed out that the statute of champerty has no effect in the mofussil of India; they held that the true principle was that stated by Sir Barnes Peacock, *viz.*, that the Courts in India administering justice in accordance to the broad principles of equity and good conscience, will consider whether the transaction is merely the acquisition of an interest in the subject of litigation *bonâ fide* entered into, or whether it is an unfair or illegitimate transaction got up merely for the purpose of spoil or of litigation, and carried on for corrupt or other improper motives.

In the third the ruling was still stronger; there it was distinctly held that delivery was not necessary to complete the title of the vendee; further that this was the general rule in India, and that under the Hindoo law a well defined usage acquires the force of law. Considering, therefore, that the latter rulings support the view taken by the Subordinate Judge, we hold that in the present case the plaintiff had a right to bring the suit.

(His Lordship after deciding the remaining issues in the plaintiff's favor dismissed the appeal with costs.)—*Idem*, p. 297.

JACKSON AND MCDONELL, JJ.

Limitation—Bengal Act VIII of 1869, *Section* 27—*Suit for Possession with Mesne Profits—Defendants—Title.*

A suit for possession of certain lands "by establishing the plaintiff's howla right," and for mesne profits, brought against a shareholder of the talook in which the lands are situated; a former talookdar and certain ryots who paid rent to the first defendant, is not a suit to recover the occupancy of the land from which the plaintiff has been illegally ejected by the person entitled to receive the rent, within the meaning of Section 27 *of Bengal Act VIII of* 1869, *and is not governed by the limitation provided by that section.*

Khajah Ashanoollah *v.* Ramdhone Bhuttacharjee.*

SUIT for possession of certain lands "by establishing the plaintiff's howla right," and for mesne profits. The defendants were the auction-purchaser of a share of the talook wherein the lands were situated, the late talookdars, and certain ryots who, the plaintiff alleged, had joined in ousting him from possession by paying rent to the first defendant.

Both the Lower Courts having decided the suit in the plaintiff's favor, the first defendant appealed to the High Court, on the ground, amongst others, that the suit ought to have been dismissed under Section 27 of Bengal Act VIII of 1869, inasmuch as it had been instituted more than a year after the date of dispossession.

Baboo *Chunder Madhub Ghose* (with him Baboo *Lall Mohun Dass*), for the appellant, contended, that the suit was practically a suit against the landlord; that the second defendant had in fact acted as a servant of the first defendant; and that the joinder of the ryots made no difference, since the suit was to recover possession, and was not a suit for rent; and that, therefore, the provisions of Section 27 of Bengal Act VIII of 1869 were applicable.

Baboo *Hurry Mohun Chuckerbutty*, for the respondent, contended that the section cited did not apply to the present suit, because the first defendant was only one of several shareholders and not a person solely entitled to receive the rent; secondly because the plaintiff also claimed mesne profits, and lastly because the tenants were joined as defendants—*Mugnee Roy* v. *Lalla Khoonee Lall.** The corresponding section of Act X of 1859 (Section 23, Clause 6) has been held to be inapplicable to suits in which the plaintiff sets out his title, and seeks to have his right declared and possession given him in pursuance of that title—*Gooroodoss Roy* v. *Ramnarain Mitter*† and *Baboo Lalljee Sahoo* v. *Baboo Bhugwan Doss.*‡

Baboo *Chunder Madhub Ghose* in reply.

The judgment of the Court was delivered by

JACKSON, J.—It appears to us that this is not a suit to which the provisions of Section 27 of Bengal Act VIII of 1869 could be applied for the purpose of barring the suit as not brought within one year. Whatever other difficulties that section may present in regard to suits differing from the present one, we think there are many circumstances which prevent the application of it here. In the first place, it is not simply a suit to recover the occupancy of land from which the plaintiff has been dispossessed by the person entitled to recover the rent. There is a certain complication in the facts alleged, because the plaintiff

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* Special Appeal, No. 1163 of 1875, against a decree of the Second Subordinate Judge of Zilla Backergunge, dated the 5th April 1875, affirming a decree of the Additional Munsiff of that district, dated the 19th September 1873.

* 6 W. R., Act X Rul. 19.

† B. L. R., Sup. Vol., 628.

‡ 8 W. R., 337.

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claims a howla right of which the principal defendant altogether denies the existence. He sues Khajah Ashanoollah, who is not the sole Zemindar, but one of the persons entitled to the rent. He sues also Ram Coomar Sen, the previous talookdar of this estate, and he also sues the several persons who are now paying rent to Khajah Ashanoollah. The case is not therefore merely whether the plaintiff has been unduly ejected from a subsisting tenure, but whether the Courts will find and establish by their adjudication a howla right which the plaintiff asserts and the defendant denies. The plaintiff also seeks to recover wasilat. Taking all these circumstances together, it appears to us that this is not a suit of the simple nature referred to in Section 27, and that clearly limitation would not apply. But beyond that it may be observed that this question is now raised for the first time in special appeal. The only kind of limitation set up by the present special appellant in his answer to the suit was that of twelve years. He denied that the plaintiff had been in possession of the land in any shape within twelve years previous to the suit. That allegation has been disallowed by both the Courts. I may observe that the defendant's written statement in this suit has been verified by his mookhtear. No doubt, there are certain kinds of cases in which an extensive landholder may be allowed to make the verification by his local agent, but there are many allegations in this case which the defendant ought to have personally admitted by signing the verification himself, and I do not think that the Court should, in the exercise of its discretion, allow written statements such as the present one to be verified by the mookhtear. For all these reasons, we think that the plea now set up must fail, and as there is no other point relied upon, this appeal must be dismissed with costs.—*Idem*, p. 325.

HER MAJESTY'S PRIVY COUNCIL.

[Bengal Case.]

Suit to recover possession of land—Lapse of twelve years.

A sued for recovery of possession by adjudication of right against B, C and D, for registration of name in the Collector's Office, and for the cancelment of some alleged fraudulent deeds of sale. It appeared that B was A's agent, and as such was entrusted with her seal and papers, and the deeds of sale alleged by A to be fraudulent purported to be deeds of sale by her to C and D, B's sons. This alleged sale was not impeached until nearly twelve years had expired, and during that time C and D enjoyed possession.

Held, *on the evidence, that all had been done with due publicity; that C and D took possession of the mouzahs, and that neither the sale nor the possession was impeached for nearly twelve years; and that A had failed to make out her case.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of *Mussamut Mehdi Begum* and others v. *Roy Huri Kishen* and others from the High Court of Judicature at Fort William in Bengal, delivered 28th June 1876.

Present.

Sir Barnes Peacock.
Sir Montague E. Smith.
Sir Robert P. Collier.

This suit is brought by Mussamut Mehdi Begum, the maternal grand-daughter and heir of a lady called Mussamut Fahimoonissa, and her father, Lootf Ali, against Roy Huri Kishen and his two sons. It is material in this case to refer to the plaint to see what is the nature of the claim and of the relief prayed. It is "claim for recovery of possession by adjudication of right against the defendants, and for "registration of name in the Collector's Office "in respect of the mouzahs and shares of "the mouzahs mentioned below, situated in "the districts of Tirhoot and Patna, by cancelment of a fabricated and fraudulent sale-"mokhtarnama, dated the 13th December "1858, purporting to have been executed by "Mussamut Fahimoonissa *alias* Bibi Amun, "and the fraudulent deed of absolute sale, dated "the 17th December 1858, which appears to "have been executed on the basis of the sale-"mokhtarnama, and also by cancelment of the "mutation proceeding." The plaint then alleges, with some detail of circumstances, that Huri Kishen became the manager of Fahimoonissa's estates, and as such agent was entrusted with her seal and papers. It then goes on, "Your petitioners, heirs to the said lady, "having obtained a certificate, dated the 4th "August 1863, under Act XXVII of 1860, "asked the first party defendant, in the beginning of January 1865, to pay them rent, "render an account of the amount collected "from villages, and return the said Mussamut's "seals and papers. But the said defendant, "who, having the said lady ancestor's seal in "his custody, had clandestinely and fraudulently, and through his dependent Lala "Jaisuri Lall as mokhtar, prepared the fraudu-

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"lent and fabricated documents sought to be "set aside in the names of his sons, the second "party defendants, under his guardianship, "put forward the said documents, and did not "return the seal, &c., or render an account of "the money collected from the villages. Your "petitioners then made inquiries in the Regis- "try Office, Collectorate, &c., and became cer- "tain of the fraud and of the fabrication of the "said deeds. From the time of the discovery "of the fraud your petitioner's dispossession "occurred." Then it alleges, "The sale-mokh- "tarnama and the deed of sale are fabricated "and fraudulent. The said lady ancestor never "executed them, nor received the considera- "tion money."

The written statements of the defendants assert the genuineness of the deeds. Paragraph 8 states, "The deed of sale and the mokhtar- "nama were executed and delivered with the "knowledge of Fahimoonissa, the mutation of "names was effected by the 'ikrar' (acknow- "ledgment) of the lady herself, and on the "depositions of an identification by Lootf Ali "himself, the plaintiff No. 1, and Mirza Wahed "Ali, the husband of the plaintiff No. 2, and "the receipt of the consideration money was "attested by the said person and other respect- "able men, and delivered. The allegations of "fraud and absence of knowledge of the plain- "tiffs and Fahimoonissa are utterly false and "incorrect. The sale-mokhtarnama has been "duly attested." Then the 9th paragraph states, "Your petitioners' purchase, made "entirely in good faith, and on payment of the "fair consideration money, is valid.

The deeds sought to be set aside are a mokhtarnama, dated the 13th December 1858, given by Fahimoonissa to Jaisuri Lall, empowering him to sell the mouzahs to the defendants, the sons of Huri Kishen, for Rupees 71,000; and also a deed of sale, dated on the 17th December in the same year, executed in pursuance of the mokhtarnama. Fahimoonissa died in 1863. On the 4th of August of that year a certificate under Act XXVII of 1860, upon the petition of the plaintiff Mehdi and her father Lootf Ali, claiming to be the heirs of the deceased lady, was granted to them. Lootf Ali, although his daughter is really the heir, is joined with her in this suit, which was not commenced until December 1870, nearly twelve years after the transactions sought to be impeached. No demand appears to have been made on the defendants in the interval; for, although it is alleged in the plaint that a demand was made on Huri Kishen to account for the rents received from the villages, none has been proved.

The case of the plaintiffs was that Huri Kishen had originally conveyed eight of the nine mouzahs in question to Fahimoonissa for valuable consideration. Two deeds were put in; one dated the 13th November 1853, by which Huri Kishen, to satisfy a debt alleged to be due to the lady, conveyed the three mouzahs which it is stated he had purchased under a decree. The other deed is dated the 26th March of the same year, by which five mouzahs obtained by Huri Kishen under similar circumstances were conveyed by him to her, also to satisfy an alleged debt. With respect to another mouzah, evidence was given to show that it was purchased in the lady's own name under a decree she had obtained against one Surroop Narain Singh and others. The plaintiffs' case further was that Huri Kishen acted as the manager of the lady, received the rents of the villages, and conducted the suits relating to them. It is alleged that he became possessed, for the purposes of this agency, of her seal and papers, and was thus enabled to fabricate the deeds sought to be set aside. The witnesses of the plaintiffs say that he paid the monies received on account of those villages to Fahimoonissa down to her death, and even afterwards.

The defendants do not rest their defence on a denial of all title in the lady to the property; and, indeed, by relying upon the deeds of sale, and by asserting that they were made for a consideration which was actually paid, they virtually admit that she had some right in it. This consideration renders it very difficult to sustain the judgment of the High Court on the broad ground on which it is put, namely, that the original instruments of sale to Fahimoonissa, and the deeds of re-sale by her to Huri Kishen's sons, were all colourable; that the mouzahs were originally vested in Fahimoonissa as nominal owner, to be held by her benamee to protect them from Huri Kishen's creditors; that he received the rents and managed the property on his own account, and not as the lady's agent, and that the re-conveyance impeached was executed for the purpose of re-vesting them in his sons by his direction as the real owner. This is an entirely new case, not made by the defendants, nor did it form the ground of the judgment of the Subordinate Judge. Still, whatever may be the title under which Fahimoonissa held the estates, the plaintiffs who come into Court to impeach deeds duly registered, to cancel the mutation of names, and to disturb long possession, have taken upon themselves the burden of sustaining their allegation that the deeds are forged, or that, if executed by Fahimoonissa, they were obtained from her by fraud. This case is traversed by the defendants, and is directly involved in the fifth issue.

The delay in bringing the suit has deprived the defendants of the evidence of the mokhtar Jaisuri Lall and the attesting witnesses to the mokhtarnama, who all died before the hearing. But several of the attesting witnesses to the

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bill of sale were called to prove that it was in fact executed and acknowledged both by the mokhtar and the lady. It is said that it was highly improbable that it should be acknowledged by the lady herself after she had empowered Jaisuri Lall to make the sale; but it may have been thought desirable to obtain her own declaration. There are, no doubt as pointed out in the Court below, inconsistencies and contradictions in the testimony of these witnesses, even making allowance for the lapse of time, which might have rendered it unsafe to act upon it, if it had stood alone. But it does not stand alone. It is corroborated by other authentic evidence and by the undisputed circumstances attending the transaction. The moktarnama was verified before registration by the Nazir of the Registrar's Office of Patna, who took the deposition of the attesting witnesses, and afterwards went to Fahimoonissa's house, and obtained her acknowledgment of it. She no doubt, was behind the purdah; and the witnesses who identified her may have deceived the Nazir; but the verification was made in the usual official manner, and may be presumed, in the absence of proof to the contrary, to have been properly done.

The proceedings for mutation of names afford still stronger corroborative evidence. Another mokhtarnama, dated 26th December 1858, was given by the lady to Jaisuri Lall, empowering him to make the mutation, and was verified by the attesting witnesses at the Collector's Office. On the 30th May 1859 a Nazir of the Collector's Office went to Fahimoonissa's house, and took her acknowledgment that she had sold the mouzahs to the defendants. The acknowledgment is recorded in these terms:—"I have sold "the whole and entire eight annas of the entire "sixteen annas of the proprietary (malikana) "and (altumgha) rights of each of the mou-"zahs," specifying them, "in conjunction with "other mouzahs attached to zillah Tirhoot, for "Co.'s Rupees 71,000, the purchase money, to "Roy Jai Kishen and Roy Radha Kishen, "minor sons under the guardianship of Roy "Huri Kishen, by a deed of sale dated the 17th "December 1858 A.D., and have received the "purchase money in full. I have no objection "to the name of the vendees being recorded in "the Government Office by the expunction of "my name.—*Question*. Is the seal in your "possession?—*Answer*. Yes, it is." This acknowledgment is witnessed by the plaintiff, Lootf Ali, the son-in-law of the lady, and the father of the plaintiff Mussamut Medhi, and by her husband Wahed Ali; and their depositions made at the time have been produced from the records of the collectorate. Lootf Ali says, "I "know and recognise Mussamut Fahimoonissa "*alias* Bibi Amun, vendor, who is now mak-"ing a declaration as to her having sold the "aforesaid mouzah for Rupees 71,000 to "Roy Jai Kishen and Roy Radha Kishen, "sons of Roy Huri Kishen, and received "the consideration money in full, and to her "having no objection to the registration of the "names of the vendees by the expunction of "her own name. *Question*. How did you come "to know her?—*Answer*. Mussamut Fahimoo-"nissa, *alias* Bibi Amun, the vendor, is my "mother-in-law, and comes before me; hence I "know her."

The report of the Nazir, Hadi Ali Khan, has been produced from the collectorate, and this officer was himself examined as a witness in the suit; he says at page 209 of the record, "I "went to the very place of Fahimoonissa in "Dewan Mahulla, one of the quarters of Patna, "and duly took down her admission as to her "having made a sale. Fahimoonissa made an "admission as to her having effected a sale, "but I do not recollect of what mouzah the "deed of sale was; it is, perhaps, in my report. "Syud Looft Ali and Mirza Wahed Ali, the "relatives of Mussamut Fahimoonissa, identi-"fied her; and Mir Lootf Ali affixed the seal of "Mussamut Fahimoonissa at the foot of her "admission. I can recognise Mir Lootf Ali "and Mirza Wahed Ali if I see them." Then he says, "I submitted a report to the Collec-"tor after having taken down the admission "of Mussamut Fahimoonissa. The copy which "I now see and read in the record is copy of "that report." It may be observed that Lootf Ali was summoned in this suit to be identified by the Nazir, but excused himself from appearing on the ground that he was sick. The Subordinate Judge thinks this excuse was false, and that he kept away to avoid being confronted with the Nazir. It is impossible to have better proof of the acknowledgment of a lady than this evidence affords. The officer who was deputed to take it appears to have done his duty. The Subordinate Judge says of him, "The open and candid manner in which "Mirza Hadi Ali has deposed satisfies me of his "veracity." The witnesses who identified the lady were her nearest male relatives, to whom she was accustomed to appear, and were at the same time those who would be concerned in protecting her property. Whilst, therefore, their Lordships are fully alive to the importance of watching with extreme care the proof of transactions relating to the property of a Purdanasheen, it appears to them credit ought in this case to be given to the evidence, that the acknowledgment of the lady was in fact made as stated by the Nazir.

It further appears to be satisfactorily proved that the possession and enjoyment of the property since the date of the conveyance have been consistent with it; and their Lordships do not believe the witnesses who say that the rents were paid to Fahimoonissa up to the time of her death. The Subordinate Judge came

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to the clear conclusion that the document of sale of 1858 had been executed by the authority and with the assent of Fahimoonissa; and their Lordships see no reason to doubt the soundness of this conclusion. One of the Judges also of the High Court, Mr. Justice Phear, appears to have thought that the documents were really executed, if indeed (of which he expresses rather a strange doubt) Fahimoonissa was a real person. But both the learned Judges of the High Court agree in thinking that they did not disclose the true nature of the transactions, the lady, in their view, having been throughout the apparent, and Huri Kishen the real owner.

The statements found in the evidence of some pleaders called by the plaintiffs certainly afford support to this view. It is not, however, consistent with the case put forward by the defendants; and if the whole issue had lain upon them, their Lordships would not have felt justified in allowing so wide a departure from that case. They think, however, as already stated, that the plaintiffs have in the first place taken upon themselves the onus of impeaching the instruments of sale. Now, whatever may have been the precise nature of the transactions, their Lordships are satisfied that those instruments were executed, with Fahimoonissa's knowledge and by her authority, with the intention of vesting the property in the defendants. They think also that there is no sufficient ground for holding that a fraud was practised upon her by Huri Kishen in obtaining them. It would require strong evidence to support such a case when the nearest male relatives of the lady whose interest it was to preserve her property were not only aware of, but present and concurring in her acts, and this evidence is not forthcoming.

The grounds on which it may properly be held that the plaintiffs have failed to sustain their claim are well stated in the judgment of the Subordinate Judge at page 254 of the record: "From the first to the last everything "was done with due publicity. Nothing was "done in a corner. The mokhtarnama was "presented and attested in the Munsiff's "Court; the kubala was drawn up in the regis- "try office; the kubala and the kubgoolasool "were registered; and in the dakhil-kharj "cases notifications were made in the mouzahs, "both in this district and in Tirhoot, and "oozoordars invited, and they did appear. It "might be said that the Mussamut having "been a Purdanasheen female could not per- "sonally have information of these things; "but this cannot be said of the plaintiff Lootf "Ali, and Wahed Ali, husband of the plaintiff "Medhi Begum, who seems to have lived on "terms of close intimacy with Mussamut Fahi- "moonissa. They certainly would not have "kept the matter from her knowledge, or been "backwards in taking immediate measures for "frustrating the sinister views of the defend- "ants. The defendants took possession of the "mouzahs immediately after the sale and leased "three of the villages, viz., Muhwa Singh Roy, "Muhwa Ram Roy, and Dyalpore to an indigo "concern in Tirhoot, as shown by the regis- "tered kubulyut dated the 20th December "1858; yet nothing was done by the plaintiffs "for a period of nearly twelve years."

In the result their Lordships will humbly advise Her Majesty to affirm the judgment appealed from, and to dismiss this appeal with costs.

CIRCULAR ORDERS OF THE BOARD OF REVENUE.

No. XIV.

STANDING No. 104-4.

IRRIGATION WORKS.

Proceedings of the Court of Wards, dated 3rd October 1876, No. 2,494.

In submitting estimates for the repairs of Irrigation works in estates under management of the Court of Wards, Collectors should state the highest revenue derived during the last five years under the work which it is proposed to repair, and, also, whether provision for the work has been made in the Budget.

(A true Extract.)

(Signed) E. GIBSON,

Acting Sub-Secretary.

No. XV.

STANDING No. 33-2.

CATTLE DISEASE.

Proceedings of the Board of Revenue, dated 9th October 1876, No. 2,535.

G. O., 28th July 1876, No. 1,010, R.D.

FROM reports which have lately reached them the Board learn with regret that in many instances when disease breaks out amongst cattle no remedies whatever are employed. Pending the arrival of a Veterinary Surgeon from England, it is essential, in order to prevent as far as possible unnecessary mortality amongst their farm stock, that the ryots should be induced by all legitimate means to follow the directions for the treatment of disease contained in the Manual drawn up by Mr. Thacker. This publication has now been distributed in the several

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Vernacular languages throughout the rural parts of the Presidency, and the medicines prescribed can be readily compounded with ingredients procurable in the bazaar of every large village. Nevertheless the reports referred to show that, owing apparently to ignorance or want of faith in them, the remedies which Mr. Thacker found so efficacious are often not applied, even the simple expedient of segregating the healthy cattle from the diseased being not unfrequently neglected. Collectors should, therefore, endeavour to remove the prejudice and ignorance on this subject by impressing upon their native subordinates and upon the Zemindars of their districts the importance and efficacy of Mr. Thacker's method of treatment, and the desirability of resorting to it on all occasions. By this means the masses may be instructed gradually to adopt the most necessary sanitary measures to prevent the spread of cattle diseases and to help themselves in saving the cattle.

(True Extract.)

(Signed) E. GIBSON,

Acting Sub-Secretary.

OFFICIAL PAPERS.

NEW FORMS OF SHIPPING AND ENTRY BILLS.

Proceedings of the Madras Government, Revenue Department, 29th August 1876.

Read the following Proceedings of the Board of Revenue, dated 2nd August 1876, No. 1,960:—

Read the following letter from the Hon. P. MACFAYDEN, Chairman of the Chamber of Commerce, to the Hon. W. HUDLESTON, Chief Secretary to Government, Ootacamund, dated Madras 22nd June 1876.

The Chamber have desired me to lay before Government the enclosed copy of correspondence that has just passed between the Chamber and the Collector of Sea Customs on the subject of the introduction of new forms of Shipping and Entry Bills. You will observe that the Collector entirely agrees with the Chamber as to the inadvisability of frequent departmental changes like that complained of. It appears, in the case referred to, to have acted under orders of the Government of India, which were issued without the Mercantile community being afforded an opportunity of remonstrating. The Chamber consider that changes involving a great addition to the already heavy labor of passing goods through the Custom-house should neither be hastily resolved upon nor hastily enforced, and they will be very glad if a representation of their opinion can be made to the Government of India.

ENCLOSURE No. 1.

From the Hon. P. MACFAYDEN, Chairman, Chamber of Commerce, to R. J. MELVILLE, Esq., Acting Collector of Sea Customs, Madras, dated Madras 10th June 1876.

I am desired by the Chamber, with advertence to your notification of the 25th April, on the subject of the introduction of new forms of Shipping and Entry Bills from the 15th instant, to solicit your attention to the inconvenience that departmental changes of this description entail upon the Mercantile community. The Chamber do not question your authority to determine upon changes in routine without studying the convenience of merchants, but they are confident you will admit the desirability of such changes being ordered as infrequently as possible, and only when they are obviously desirable. The labor of getting an office to master the routine of the Custom-house, and the difficulty of enforcing the observance of new regulations, are so considerable that the Chamber are constrained to deprecate the disposition that is being shown to obtain a technical uniformity with Bengal, which impose obstacles in the way of local trade without, so far as the Chamber have yet ascertained, confering the smallest advantage on any body.

2. It will, therefore, be gratifying to the Chamber should you resolve to postpone the enforcement of the new forms of Bills referred to in your notification; but should that be now impracticable, I have the honor to beg that you will take the Chamber's opinion on the inadvisability of frequent departmental changes into consideration on the next occasion that an innovation is proposed for adoption.

(True Copy.)

(Signed) C. A. LAWSON,

Secy. Chamber of Commerce.

ENCLOSURE No. 2.

From R. J. MELVILLE, Esq., Acting Collector of Sea Customs, Madras, to the Honorable P. MACFAYDEN, Chairman of the Chamber of Commerce, dated 13th June 1876, No. 1,024.

In acknowledging receipt of your letter, dated 10th June 1876, I have the honor to inform you that I entirely agree with you on the inadvisability of frequent departmental changes of the nature under notice.

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2. I at the same time regret that I am unable to postpone the introduction of the new forms of Bills referred to in your letter, their immediate introduction having been ordered by the Government of India.

(True Copy.)

(Signed) C. A. LAWSON,
Secy. Chamber of Commerce.

Referred to the Board of Revenue for Report.

(Signed) D. F. CARMICHAEL,
Secretary to Government, R. D.

OOTACAMUND, 26*th June* 1876.

The system of demanding duplicates of Entry and Shipping Bills was ordered to be introduced at the suggestion of Mr. O'Connor, who was lately deputed by the Government of India to inspect the working of the Trade Department in this Presidency, and this is absolutely necessary to ensure the early preparation of the Trade Returns to which the Government of India attach great importance.

2. As regards the forms, those now introduced are the same as those used in Calcutta, which the Government of India apparently wish to see introduced everywhere—*Vide* letter from Government of India, recorded in G. O., dated 11th February 1875, No. 220, and Board's Proceedings, dated 29th March 1876, No. 861. There is not much difference between the forms themselves, as will be seen from the new* and old† forms which are herewith submitted, except that the classification of the articles is more detailed than before, and the entries are required to be summarized. The detailed information is indispensable, as it is required for the preparation of the Monthly and Annual Returns, and the summary does not entail any considerable amount of trouble on the trade. The Board are of opinion that the forms now introduced must be retained and should be presented in duplicate.

* Marked A.
† Do. B.

(True Copies and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

Order thereon, 29th August 1876, No. 1,185.

The Chamber of Commerce will be informed that the new forms of Shipping and Entry Bills have been considered in communication with the Government of India to be indispensable for the Monthly and Annual Returns of Trade, and the trouble they entail is not so great as to counterbalance the administrative advantages secured. The Chamber may be assured that frequent changes are as inconvenient to Government as to the merchants; but where they are necessary, a moderate increase of trouble involved by them ought not to interfere with their being duly carried out.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

NELLORE CATTLE SHOWS, JANUARY 1877.

Proceedings of the Madras Government, Revenue Department, 2nd *September* 1876.

Read the following Proceedings of the Board of Revenue, dated 25th August 1876, No. 2,206 :—

Read the following letter from F. R. H. SHARP, Esq., Acting Collector of Nellore, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 2nd August 1876, No. 2,182 :—

WITH reference to the Proceedings of the Board of Revenue, dated 21st July 1876, No.—, sanctioning the holding of the Cattle Shows at Addanki and at Nellore on the 17th and 18th January and 1st and 2nd February 1877 respectively, I have the honor to submit the usual prize lists with certain emendations in the case of the Nellore list, the additions being marked N. On these I subjoin the following remarks.

2. Looking to the great improvement and extension of roads which has taken place within the last few years, together with the rapidly increasing wealth of a certain section of the agricultural classes, it appears well to encourage competition in plans of carts better suited for travellers than the ordinary old fashioned bandy with its high narrow body, open sides, and clumsy wheels, adapted chiefly for carriage of goods and for traversing the worst and the roughest cart tracks; hence the proposed offer of a prize for a travelling cart.

3. For similar reasons, a prize is proposed for a pony vehicle.

4. In this district, nose ropes are not in use for bullocks, the only method almost of pretence at controlling them being by means of a rope tied round the base of the horns, which affords no control. The yoke too might be made lighter and better shaped for some work, as is the case in America I believe. Hence partly the suggested prize for bullock harness.

5. The other new prizes call for no special remark.

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6. These additions involve an enhanced cost of Rupees 205. On the other hand, I propose reductions under the head of Cotton and Saltpetre as given below, the reduced rates being in my opinion, ample for the purpose. On the whole, a net additional cost of Rupees 45 is proposed as compared with the prize list of the shows in 1874, the last occasion on which exhibitions were held at both Addanki and Nellore.

	Old Rate.		New Rate.
	RS.		RS.
Cotton—3 Prizes of	200	3 Prizes of	150
	100		70
	50		40
Saltpetre—3 do. of	50	2 do. of	40
	20		25
	10		
Cotton gin—2 do. of	100	2 do. of	70
	75		50
	605		445

Saving 160

7. I request the favor of early sanction for the prize lists.

ENCLOSURE No. 1.—List of Prizes.

This letter will be submitted for the orders of Government.

2. The Board approve the allotment of prizes proposed by the Collector, but doubt whether in the present state of the finances Government will be disposed to permit the shows to be held. The cost would be Rupees 6,000, viz., Rupees 2,300 for Addanki and Rupees 3,700 for Nellore. The Budget allotment is Rupees 5,000 only, but in the event of sanction being accorded, the balance could be met from savings under Surplus Pound Fund—see G. O., 20th January 1876, No. 122, paragraph 15.

(A true Copy and Extract.)

(Signed) C. A. GALTON,

Acting Secretary.

Order thereon, 2nd September 1876, No. 1,213.

The Government are of the opinion expressed by the Board, that the Nellore Cattle Shows appointed to be held in January next must be given up, owing to the present financial pressure.

(True Extract.)

(Signed) D. F. CARMICHAEL,

Secretary to Government.

HEAD-QUARTERS OF UTTENGIRI TALUK IN SALEM DISTRICT.

Proceedings of the Madras Government, Revenue Department, 30th October 1876.

Read the following Proceedings of the Board of Revenue, dated 25th September 1876, No. 2,424 :—

Read again Board's Proceedings, dated 3rd July 1876, No. 1,700.

Read also the following letter from C. T. LONGLEY, ESQ., Collector of Salem, to C. A. GALTON, ESQ., Acting Secretary to the Board of Revenue, dated Salem, 2nd September 1876, No. 222 :—

I HAVE the honor to reply to the Board's Proceedings, No. 1,700, of the 3rd ultimo.

2. The taluk of Uttengiri formed a part of the Darampuri Taluk up to 1821, when it was formed into a separate taluk and Kummenellore the head-quarters of the mutta of that name, was made the taluk cusbah. In 1823, for reasons not forthcoming, but apparently from the fact of Kummenellore being a mutta village and in one corner of the taluk, the cusbah was transferred, on the 11th December 1823, to Harur. It continued there till August 1825 when it was removed to Uttengiri by an order of the Collector, which simply stated that "the Cutcherry servants were sick." Here it has remained ever since, but successive Tahsildars have complained of the unhealthiness of the place and asked for a change. In 1854, Teagaraja Pillay, the then Tahsildar, most strongly urged the necessity of a removal from Uttengiri on the ground that the whole of the establishment was laid up with fever. His successors, Gnanasagara Row in 1862, and Streenivasa Iyengar in 1866, repeated the same request. In 1874, the present Tahsildar, Venkatasooba Row, and the whole of the Cutcherry officials were so completely prostrated with fever, that the business of the taluk came to a stand-still, and I was obliged, as the Board are aware, to remove the cusbah to Harur.

3. It will be seen from the above that the Cutcherry was at Harur only for a very short time (a year and half), and that Uttengiri was condemned as unhealthy by almost every Tahsildar that has had the charge of the taluk since it was made the cusbah. On the other hand, Harur has been the cusbah of the Deputy Tahsildar since 1866, and no complaint has been made of its unhealthiness.

4. Besides its situation, there are several natural causes which render Uttengiri unhealthy, and which it is not possible to remedy effectually.

5. In 1874 when the fever epidemic prevailed almost all over the taluk, especially at Uttengiri, there was no fever at Harur; and in the years 1854, 1862, and 1866 when the officials were prostrated with fever at Uttengiri, Harur

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appears to have been free from it. Harur is, therefore, not only on account of its greater salubrity, but also from the centrical situation it occupies in the taluk and other reasons (mentioned in my letter, No. 129, dated 8th June 1876), best fitted for the cusbah of the taluk. The Local Fund Dispensary has also been located there.

6. An extract from the report received from the present Tahsildar of the taluk is enclosed for the Board's information.

ENCLOSURE No. 1.

Extract from a Memorandum by the Tahsildar of Uttengiri.

* * * *

There are some natural causes to render the place unhealthy. Close to the town, on the north is a low marshy ground which with its excessive growth of rank vegetation in rainy season breathes an impure air into the town. The town is, as Dr. Pearse remarks, no doubt on a little elevated ridge, but this ridge being only a little break in a sloping surface commencing from Jenda Medu on the road to Samalputti, and being a part of an incline towards the marshy ground on the north, commencing from half a mile south of the town, it seems to me that the people can enjoy no immunity from the effects of the exhalation of the surrounding vegetation.

At the beginning of this incline, *i. e.*, south of the town, is a tank which when full renders the surface of all backyards and houses saturated. Even granting that the people refrain from using the water of the well into which the tank sends in its leakage through the pores, it seems to me that as a repository of stagnant water, the tank cannot fail to send an impure and damp air over the town. As regards the purity of the water available at this place, I should only refer to Dr. Pearse's letter.

The only thing in favor of retaining Uttengiri as head-quarters is that the Gumastahs and Peons have houses there.

Harur was the head-quarters of the taluk for only a short time (a year and half), and it cannot, therefore, be pronounced unhealthy as we have not given it a fair trial. Even if fever existed, it seems that the causes for it might be considered as no longer existing, for the jungle which some years back was close to the town is now far removed. No doubt the main portion of the town is close to wet lands and a little below the tank, but the river which runs through the town is sufficient to drain it to keep it healthy. The only objection the peons of the Cutcherry urged against the transfer of the Cutcherry to Harur is that they cannot get houses there. This is true to some extent, but this difficulty can be met by giving them some compensation.

Harur is the centre of the taluk. It is more populated and has more commerce, &c., than Uttengiri. Since 1866 Harur has been the head-quarters of the taluk, but the officials never complained that the place was unhealthy.

(True Extract.)

(Signed C. T. LONGLEY,

Collector.

Submitted for the orders of Government.

2. In his letter recorded in the Proceedings read above, the Collector of Salem proposed the transfer of the taluk head-quarters from Uttengiri to Harur, on the ground that the latter is more central and more healthy, and that by this arrangement the necessity for the construction of a new Taluk Cutcherry, at the former place will be avoided and a saving of some Rupees 15,000 effected. At Harur there is a building which with certain alterations, estimated to cost about Rupees 3,000, will make a suitable Tahsildar's Cutcherry, whilst the Deputy Tahsildar can be transferred to Uttengiri.

3. As it appeared that the head-quarters of the taluk had at one time been fixed at Harur, the Collector was called upon to state why they were removed thence to Uttengiri. From the letter read above it appears that Harur was the head-quarters of the taluk for a very brief period from the end of 1823 to August 1825, and that the change was made because the Cutcherry servants were sick. Successive Tahsildars have complained of the unhealthiness of Uttengiri, however, and in his letter of the 25th January 1875, the Collector reported that, owing to the prevalence of severe fever, he had been obliged to remove the Tahsildar's office and treasury to Harur as a temporary measure, which the Board approved. From the Tahsildar's report, which forms an enclosure to the Collector's letter, it would appear that the unhealthiness of Uttengiri is due to defective drainage and the impurity of the water-supply, whilst he ascribes the bad reputation which Harur formerly possessed to the presence of jungle in the immediate vicinity of the town which has now been cleared.

4. Under these circumstances, the Board support the Collector's recommendations, and request sanction for the preparation of the requisite plans and estimates and for the compensation proposed.

(True Copies and Extract.)

(Signed) H. E. STOKES,

Acting Secretary.

Order thereon, 30th October 1876, No. 1,526.

The Government understand the proposal to be to effect a transfer between the head-quarters of the Tahsildar and Deputy Tahsildar on the ground that Harur is the healthier station of the two; the Board's statement in paragraph

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2 of their Proceedings, 25th September 1876 (as regards the removal of the Deputy Tahsildar's head-quarters), evidently containing an error, Harur being named for Uttengiri. Before deciding on the question raised, the Government desire to have the opinion of the Sanitary Commissioner regarding the relative sanitary conditions of the two stations. As the objections to having the Tahsildar at Uttengiri will apply also to the Deputy Tahsildar being posted there, although perhaps with somewhat less force, the Collector should be instructed to select, if possible in communication with the Sanitary Commissioner, another place free from the objections urged against Uttengiri and sufficiently convenient for administrative purposes, in view to its being made the head-quarters of the Deputy Tahsildar.

2. The cost of securing proper accomodation for the Tahsildar and his establishment at Harur seems to be under-estimated. The Gumastahs will require compensation equally with the peons. The Collector will, in communication with the Public Works Department determine the total expenditure involved in his proposal, and report it to Government. Meanwhile, the Government sanction the continuance of the existing arrangements.

(True Extract.)
(Signed) D. F. CARMICHAEL,
Secretary to Government.

MISCELLANEOUS.

FAMINES IN INDIA.

WHILE great schemes of irrigation and improved communications are being discussed in all their varied bearings to prevent the recurrence of famines, some attention should, we think, be drawn to the fact of the *general denudation of trees* all over India, for to this may be, in a very considerable measure, ascribed the unproductiveness of the land. The vast tracts of forests that once existed, have been gradually cleared for agricultural and pastoral purposes. The result of this indiscriminate denudation is a diminished rainfall, a dryness of the atmosphere, and a proportionate elevation of the temperature. The surface of the soil, formerly moist, spongy, and porous, is now a hard, dry crust, which, under the influence of the sun, splits into cracks and fissures, into which, when it rains, great part of the water flows, while the remainder, superficially passing over the hardened crust, penetrates it but slightly, and, without benefit to the crops, collects in depressed tracts, where it becomes foul and stagnant, and spreads fever throughout its neighbourhood. As there are neither leaves nor widespreading branches to attract the passing clouds and retain the moisture, and as there are no longer deep roots to absorb the water and conduct it down to feed the springs, the sources of the smaller rivers and streams are gradually dried up, and the subsoil water recedes further and further from the surface. The roots of the crops, having to traverse longer distances for water, become exhausted in their endeavour to find it, and but little strength remains to form the stem, leaves, and produce of the plants. The difference between the seasons is now less marked, rains have become scarce, and droughts more frequent and excessive. Immense tracts of land, formerly productive, are now desolate, *leading to the conclusion that, whereas human beings would not render that necessary assistance to nature that she requires, she has, by her mighty hand, laid the country waste to give it rest and time to recover from the exhaustion consequent on taking everything possible from the land and returning nothing to it.* When rain falls, it comes down in torrents, and, instead of penetrating the soil, flows over it as previously described, and the flood is followed in turn by a period of drought. Thus from the general absence of trees—and the few that remain are liable to still increasing diminution,—drought and famines may be considered as of very natural recurrence, and, what is worse, with lessening intervals of time between each reappearance, until they will become an annual event in the different divisions of India, causing an immense loss, direct and indirect, to the revenue from the unproductiveness of the land.

Irrigation *is but a partial remedy for drought*, and is extremely local in its effects; and, after the lapse of a certain number of years, the irrigated lands become silicified by the sandy particles brought down the canals (from their head-works) in a state of suspension, and distributed over the adjacent fields. Besides, it merely affords a certain amount of liquid to the crops without their being able to obtain any nourishment of a stamina-giving property, which should come from the soil, but which from an absence of manure, has long since been exhausted. The sulphates and phosphates which are required to supply part of the material necessary for the composition of the nutritive proteine compounds found in grains of economic value, are absent to a great degree; in fact, merely the silica, which gives firmness to the stems of the plants, exists to any considerable extent. *No permanent good will be done, until the inhabitants are enabled to give up the practice of burning cow-dung and other manures for cooking and household purposes, and using their farm-yard heaps to burn bricks, tiles, and lime with, and so robbing the land of its just dues.* These manures, which contain the azotized matters—consisting of proteine compounds, supplying nitrogen for the development of the muscular tissues of man and animals—not being employed in a proper

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manner, the soil, without them, cannot contain the ingredients required for a crop; wherefore the corollary of a poor outturn must be looked forward to. *This can only be remedied by placing cheap wood-fuel within reach of the inhabitants.* Again, injudicious irrigation, without proper drainage, causes the formation of swamps, and the diversion of streams from their original beds. The natural tendency of these swamps is to increase gradually, and in doing so they must, to a greater or less extent, saturate the adjacent soil, rendering the neighbourhood unhealthy in the extreme.

It is, therefore, suggested that *Arborescent Plantations* be formed. They should be squares or parallelograms properly demarcated, and enclosed. Each one should contain about 800 acres, and be under the supervision of a European ranger; a man who has had experience in Europe, as a gardener or agriculturist to be preferred.

The situations of the plantations should be as follows:—

First.—Near cities and towns.

Second.—At the fuelling stations of the railways.

Third.—On the banks of navigable canals, and rivers.

Fourth.—On *quasi*-unproductive lands.

Of the latter, there are immense areas belonging to Government and private persons, and which by deep ploughing would be fitted to receive such various description of seeds of trees as thrive in poor soils, till in the course of time the leaves, decaying branches, trunks, &c., falling and mixing with the earthy particles, would form a humus, which, in its turn, would become suitable for raising other and better descriptions of trees, while the atmosphere of the neighbourhood would be rendered humid, and more equable, greatly benefitting the surrounding fields.

The land required for these plantations, were belonging to private persons, can be taken up under special authority, like land for railway, canal, and other public purposes. Apart from the prospective benefits to be derived from undertaking such a scheme, *it will afford a large amount of immediate employment all over the area now subject to famine.*

To each arborescent plantation should be attached:—

First.—A small *Experimental Farm* by means of which examples of *improved and deep ploughing*, so necessary to loosen the sub-soil so as to be easily acted upon by air and water, while it increases the efficiency of the drainage, would be brought home to the very doors of the native cultivators; the proper explanation of the principles which guide the application of different kinds of manures to varying descriptions of soils could be shown to them; and improvements in husbanding generally placed before them in such a manner as to teach them, if for no other reason than to benefit themselves pecuniarily, the advisability of following the examples thus set before them.

Second.—A small *Cattle Breeding Establishment*, of a few choice animals only, for the general improvement of live-stock in the neighbourhood.

Third.—*A Granary, above or under ground.* The products from the Experimental Farms could be annually stored in them, and would be useful in years of scarcity. Their positions would prove very suitable centres for distribution in cases of necessity, without any additional cost to the general expenditure. Attention is especially directed to this suggestion for those places which are now, and will be for many years to come, without roads or other means of transporting food from one part to another.

The ranges could report weekly on the general state of the crops in their immediate neighbourhood, and thus give early warning of any approaching dearth: they could also make simple, but regular, Hygrometrical (especially) and meteorological (generally) observations on the same return.

The population is increasing in a greater proportion than the land—with present agricultural appliances, and an absence of manure—can support. The time has, therefore, arrived when the people must be helped to return the latter to the earth; while as to the former they require to be taught improved methods of farming, by practical examples, so as to obtain an increased production from their present holdings, as they have not that fertility of invention that exists among other similarly situated nations—the Chinese to wit—who, by proper cultivation, can maintain their families with every degree of comfort, on a very limited area.

Every year a large quantity of seed is wasted by the inhabitants, as they sow considerably more than is required to allow for the destruction, by white ants, of a large portion of the young plants. Only in poor soils, where the plants are weak, are they attacked by these destructive insects, as they do not attack strong, healthy, crops, growing in well manured rich ground.

A considerable increase in the present staff of the Forest Department must needs take place, not only for forming new plantations but also for demarcating and enclosing existing timber tracts. The present efforts of the Forest Department, though strained to the utmost extent, are totally inadequate to the imperial work of restocking India with arborescent vegetation within a moderate lapse of time to prevent future droughts and famines. The expenses, though very great at first, will speedily be covered by the profits from the sales of fuel and other useful woods, and after ten or fifteen years have elapsed the plantations will not only become *self-supporting, but they will annually yield a handsome addition to the revenues of India.*—*Indian Agriculturist*, Vol. I, p. 304.

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